SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 180

HOLYOKE WATER POWER COMPANY,
PETITIONER,

vs.

AMERICAN WRITING PAPER COMPANY, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

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[fol. 1] [Caption omitted]

IN UNITED STATES DISTRICT COURT, DISTRICT OF MASSACHUSETTS

No. 55719. In Bankruptcy

In the Matter of AMERICAN WRITING PAPER COMPANY, INC., Debtor

PETITION OF HOLYOKE WATER POWER COMPANY FOR LEAVE TO INTERVENE—Filed July 13, 1934; Allowed August 21, 1934

To the Honorable the Judges of the District Court of the United States for the District of Massachusetts:

Now comes the Holyoke Water Power Company and respectfully alleges and shows:

1. That your petitioner is a corporation organized and existing under the laws of the Commonwealth of Massachusetts and owns and operates a dam, canals and water power development in the City of Holyoke in said Commonwealth, [fol. 2] and that the mill sites of the debtor referred to in paragraph 3 of its petition, in the City of Holyoke, Massachusetts, are held by the debtor under grants either directly from your petitioner or through other persons or corporations under mesne conveyances originating with your petitioner, or its predecessor, the Hadley Falls Company, and that said debtor is obligated to your petitioner for the performance of the terms and conditions of said grants and indentures and for the rentals of the mill powers held by it in Holyoke.

2. That there is pending in the District Court of the United States for the District of Massachusetts a suit under the caption of Holyoke Water Power Company v. American Writing Paper Company, Incorporated, No. 5932 in said court, in which your petitioner claims the sum of $32,034.24 for rentals unpaid by said debtor, and there is also pending in the Superior Court of the Commonwealth of Massachusetts for the County of Hampden a suit under the caption of Holyoke Water Power Company v. American Writing Paper Company, Incorporated, Superior Court, Hampden County, No. 43466 Equity, involving the use of mill powers

held by said debtor under the terms of said grants and indentures and the unauthorized use of water drawn from the canals or water courses of the petitioner. That your petitioner has other claims for rentals against the debtor amounting to $37,121.01.

3. That the grants and indentures under which the debtor holds its mill sites in Holyoke involve rights between said debtor and your petitioner which are necessarily to be continuing and operative prospectively and indefinitely and that, therefore, your petitioner is much interested and concerned with the affairs of said debtor.

4. That your petitioner prays for leave to intervene in the above-entitled proceedings for the purpose of raising before the court the question of the constitutionality of Sections 77-A and 77-B, or any portion thereof, of the Act of Congress approved June 7, 1934, with reference to proceedings for the relief of debtors.

5. That for the reasons hereinbefore set forth, not waiving but insisting on the rights prayed for in paragraph 4 hereof, your petitioner prays for leave to intervene in the [fol. 3] above-entitled proceedings and for notice of and for a right to be heard in the following matters or any of them:

(a) On the question of the appointment of any trustee or trustees;

(b) On any plan of reorganization proposed;

(c) On any proceedings affecting the property or water rights held by the debtor under any indentures from the petitioner or its predecessor, the Hadley Falls Company, or their respective grantees;

(d) Upon any proceedings with reference to the rejection or disaffirmance of any such indentures;

(e) Upon any proceedings with reference to the sale, separation, or segregation of any of the assets of the debtor, by a holding company or by any other method directly or indirectly.

(f) Upon any proceedings involving present pending litigation by your petitioner against the debtor;

(g) Upon any proceedings with reference to the foreclosure of liens or mortgages upon the property of the debtor;

(h) Upon any other proceedings or action affecting or which may affect the relations between the petitioner and the debtor under the terms of the grants or indentures under which the debtor holds its mills in Holyoke, or under any other agreements between the petitioner and the debtor.

Holyoke Water Power, Petitioner, by Robert E. Barrett, President and Treasurer. Warren, Garfield, Whiteside & Lamson, 30 State Street, Boston, Massachusetts, Avery, Gaylord, Healy and Button, 56 Suffolk Street, Holyoke, Massachusetts, Counsel for the Petitioner.

Boston, Massachusetts, July 12, 1934.

Subscribed and sworn to by the above-named Robert E. Barrett, before me, Scott D. Ferguson, Notary Public. [Seal.]

[fol. 4] August 21, 1934.

McLellan, J.:

After hearing counsel, the foregoing petition is hereby allowed.

By the Court.

Arthur M. Brown, Deputy Clerk.

In United States District Court

Petition of Holyoke Water Power Company Relative to Payment of Rentals by the Debtor—Filed January 18, 1935

To the Honorable the Judges of the District Court of the United States:

Now comes the Holyoke Water Power Company and respectfully alleges and shows:

1. That your petitioner has heretofore been permitted to intervene in these proceedings and is more fully described

in its petition therefor to which petition reference is hereby made.

2. That the debtor, American Writing Paper Company, Incorporated, holds under indentures from your petitioner through other persons or corporations under mesne conveyances originating with your petitioner certain mill powers, said indentures being recorded in Hampden County, Massachusetts, Registry of Deeds, in Book 426, page 469; Book 388, page 167; Book 385, page 274; Book 385, page 445; Book 426, page 465; Book 503, page 524; Book 579, page 109; Book 387, page 216; Book 487, page 94; Book 447, page 369; Book 501, page 515; Book 533, page 293, and Book 603, page 55; and that under the terms of said indentures the quarterly and semi-annual rentals reserved by your petitioner for said mill powers are payable under a provision practically the same in all of said indentures, one of which is typical for the others and calls for payment of rentals in "a quantity of gold equal in amount to $1,500.00 of the gold coin of the United States of the standard of weight and fineness of the year 1894, or the equivalent of this commodity in United States currency". Reference is hereby made for a more full description of said indentures to the record of a case in this court brought by your petitioner against said debtor and numbered Law 5932, and heard in this court on November 2, 1934 and January 2, 1935, and decided on said [fol. 5] January 2, 1935, and reference is also made to the books and respective pages thereof hereinbefore recited in which are recorded said indentures in the Registry of Deeds of said Hampden County.

3. The debtor has tendered to the petitioner for payment of the instalment of these rentals which became due on July 1, 1934, together with the instalment amounting to four hundred and fifty dollars ($450) which became due on the same date but under a rental clause of a different type, a check in the amount of twenty-two thousand two hundred seventy-nine dollars and thirty-one cents ($22,279.31); for payment of the instalment of these rentals which became due on October 1, 1934, a check in the amount of two hundred ninety-nine dollars and twenty-five cents ($299.25); for payment of the instalment of these rentals which became due on January 1, 1935, together with the instalment amounting to four hundred and fifty dollars ($450) which became due on the same date but under a rental clause of a different

type, a check in the amount of nineteen thousand nine hundred seventy-nine dollars and ninety-three cents ($19,979.93). The debtor accompanied each of these checks with a letter, copies of which are hereto annexed marked "Appendix A", setting out that the check therein referred to was "in full payment of the instalments" of mill power rentals due July 1, 1934, or October 1, 1934, or January 2, 1935, respectively; that your petitioner deposited and collected the checks of July 1, and October 1, 1934, at the same time replying to the letters of the debtor of those dates by letters, copies of which are hereto annexed and marked "Appendix B", in which your petitioner set out that the amounts of the checks did not constitute full payment of the instalments of rentals due and calling the debtor's attention to the respective indentures.

4. That your petitioner has not deposited or collected the check received by it from the debtor on January 2, 1935, for the instalment of rentals due January 1, 1935, for the reason that on said January 2, 1935, this Honorable Court, in Law case No. 5932, above referred to, determined by an opinion by McLellan, J., in which it was stated:

"In the typical indenture the defendant undertook to pay the equivalent of the amount of gold in $1500.00 of gold coin. [fol. 6] The plaintiff's damages are to be measured in this way, and the question for determination is the value of gold in Holyoke, Massachusetts, where, and on January 2, 1934, when the rental was payable. * * *

"The burden of proof is upon the plaintiff to establish his damages and the only relevant evidence submitted as to the market price of gold was the price obtainable from the Government on January 2, 1934, when by implication the price was fixed at $20.67 an ounce, or on January 17, 1934, when the price was expressly so determined by executive order. On this basis the plaintiff was entitled to receive in currency at Holyoke, Massachusetts, on January 2, 1934, the sum of $20,887.86."

In view of that opinion and of the fact that the price which the Government mints would pay for gold was fixed by Provisional Regulations issued under the Gold Reserve Act of 1934, by the Secretary of the Treasury, approved by the President, on January 31, 1934, as thirty-five dollars ($35), your petitioner wrote a letter on January 12, 1935, to the

debtor, a copy of which is hereto annexed and marked "Appendix C" in which your petitioner demanded of the debtor an amount, viz, thirteen thousand five hundred thirty-six and sixty-eight cents ($13,536.68), additional to the amount tendered by the debtor in the check received by your petitioner on January 2, 1935, which additional amount should represent the difference between the amount of the check so received and the currency equivalent of the quantity of gold deliverable by the terms of the indentures to your petitioner in ounces of gold.

5. On each of these dates on which the three instalments of rent hereinbefore mentioned were payable, viz., July, 1, 1934, October 1, 1934, and January 1, 1935, the market price of fine gold was $35 per troy ounce of such gold purchased by the Government and the respective instalments therefore should have been in the amount of thirty-seven thousand four hundred and nine dollars and twenty-three cents ($37,409.23) for the instalment due on July 1, 1934, in the amount of five hundred and seven dollars and thirteen cents ($507.13) for the instalment due on October 1, 1934, and in [fol. 7] the amount of thirty-three thousand five hundred and sixteen dollars and sixty-one cents ($33,516.61) for the instalment due on January 1, 1935.

6. That under said indentures your petitioner would be entitled, except for the pendency of the proceedings under Section 77-B, to bring suit for the rentals or the balance of any rental not fully paid, against the debtor and following the entry of judgment in said suit to make entry upon the premises covered by the indenture and to hold and use the same subject to redemption by payment, within three years of such entry upon the premises, of the amount of judgment with interest and expenses, and that therefore delay in the payment of the true amounts due from the debtor to the petitioner greatly damages the petitioner and should not be permitted to arise and continue because of the pendency of the present proceedings.

Wherefore your petitioner prays:

1. That your petitioner be given permission to collect as a payment *pro tanto* the check received by it on January 2, 1935, without prejudice to or waiver of its right to establish and prove in the pending proceedings in this court its claim

for, and to collect by suit in this court or otherwise, the balance of the amount of rentals which became due on said January 1, 1935, over and above the amount of said check and notwithstanding the attempted imposition in the debtor's letter of January 2, 1935, of the condition that said check constituted full payment of the instalments of rentals due said January 1, 1935.

2. That the debtor be ordered to pay to the petitioner the full amount or in case of partial payments the balance of the full amount of the rentals according to the terms of the several indentures computed at the market price, viz., $35 per troy ounce of fine gold of the quantities of gold called for under the several indentures on the respective dates when such instalments were due, viz., July 1, 1934, October 1, 1934, and January 1, 1935.

3. Or in the alternative to the preceding prayer that your petitioner be given leave by an order of your Honorable Court to begin and prosecute suit in the District Court of the United States for the District of Massachusetts against [fol. 8] the debtor to recover the full amount or in case of partial payments the balance of the full amount of the rentals due according to the terms of the several indentures computed at the market price, viz., $35 per troy ounce of fine gold of the quantities of gold called for under the several indentures on the respective dates when such instalments were due, viz., July 1, 1934, October 1, 1934, and January 1, 1935, and that the injunction contained in the order of this Honorable Court dated June 25, 1934, be modified accordingly.

4. And for such other and further relief as to the court seems just.

Holyoke Water Power Company, by Warren, Garfield, Whiteside & Lamson, Avery, Gaylord, Healy and Button, Its Attorneys.

Of Counsel: Bentley W. Warren. Nathan P. Avery. James M. Healy.

Appendix "A" to Petition

American Writing Paper Company, Inc.

July 2, 1934.

Holyoke Water Power Company, Holyoke, Mass.

Gentlemen:

We enclose our check in the amount of $22,279.31, in full payment of the installments of non-permanent mill power rentals due July 1, 1934 and installments of permanent mill power rentals due July 1, 1934 to the Holyoke Water Power Company from the American Writing Paper Company, Incorporated, in accordance with the terms of the indentures recorded in Hampden County Registry of Deeds, as follows:

[fol. 9]

	Book	Page	Gross	Deductions Days	Hrs.	Amt.	Net
Crocker	533	293	$4,350.00	6	9	$184.87	$4,165.13
Dickinson	387	216	900.00)	7	9	211.64	3,838.36
	603	55	3,150.00)	7	22		
Gill	447	369	1,500.00	2	8	23.34	1,476.66
Linden	501	515	3,000.00	7	22	158.34	2,841.66
Norman	487	94	2,250.00	0	0	0	2,250.00
Parsons	426	469	450.00	0	0	0	450.00
Riverside	503	524	750.00)	10	0	117.50	1,532.50
	579	109	900.00)	11	6		
			$17,250.00			$695.69	
Net amount due 7/1/34							$16,554.31

* Days and hours deprived of water and corresponding amounts deductible according to indentures.

	Book	Page	Amount
Beebe & Holbrook	426	396	$700.00
Massasoit	385	274	900.00
Wauregan	385	445	1,125.00
Parsons	182	191	150.00
do	426	465	300.00
Riverside	503	524	750.00
do	579	109	300.00
Holyoke	188	535	300.00
Dickinson	387	216	450.00
Norman	487	94	750.00
Net due 7/1/34			$5,725.00

Yours very truly, American Writing Paper Company, Incorporated, by W. J. Norton, Treasurer.

[fol. 10] American Writing Paper Company, Inc.

October 5, 1934.

Holyoke Water Power Company, Holyoke, Mass.

GENTLEMEN:

We enclose our check in the amount of $299.25 in full payment of the following charge:

Three months rent of Non-permanent Mill Powers, Parsons Division, July 1, 1934 to October 1, 1934	$450.00
Less: 25⅛ days deprivation of water at $6.00	150.75
Net amount due	$299.25

Yours very truly, American Writing Paper Company, Incorporated, by W. J. Norton, Treasurer.

American Writing Paper Company, Inc.

January 2, 1935.

Holyoke Water Power Company, Holyoke, Mass.

GENTLEMEN:

We enclose our check in the amount of $19,979.93 in full payment of the installments of non-permanent mill power rentals due January 1, 1935 and installments of permanent mill power rentals due January 1, 1935 to the Holyoke Water Power Company from the American Writing Paper Company, Incorporated, in accordance with the terms of the indentures recorded in Hampden County Registry of Deeds, as follows:

[fol. 11]

	Book	Page	Gross	Deductions Days	Hrs.	Amount	Net
Crocker	533	293	$4,350.00	26	0	754.00	$3,596.00
Dickinson	387	216	900.00)	24	12	887.01	3,162.99
	603	55	3,150.00)	35	4		
Gill	447	369	1,500.00	23	2	230.90	1,269.10
Linden	501	515	3,000.00	35	4	703.40	2,296.60
Norman	487	94	2,250.00	1 Night	0	5.00	2,245.00
Parsons	426	469	450.00	0	0	.....	450.00
Riverside	503	524	750.00)	38 Night	0	414.76	1,235.24
	579	109	900.00)	37	6		
			$17,250.00			$2,995.07	
Net amount due 1/1/35							$14,254.93

* Days and hours deprived of water and corresponding amounts deductible according to indentures.

	Book	Page	Amount
Beebe & Holbrook Division	426	396	$700.00
Massasoit Division	385	274	900.00
Wauregan Division	385	445	1,125.00
Parsons Division	182	191	150.00
do Division	426	465	300.00
Riverside Division	503	524	750.00
do Division	579	109	300.00
Holyoke Division	188	535	300.00
Dickinson Division	387	216	450.00
Norman Division	487	94	750.00
Net due 1/1/35			$5,725.00

Yours very truly, American Writing Paper Company, Incorporated, by W. J. Norton, Treasurer.

APPENDIX "B" TO PETITION

July 3, 1934.

American Writing Paper Company, Inc., Holyoke, Massachusetts.

GENTLEMEN:

This is to acknowledge receipt on this day of a check of the American Writing Paper Company, Inc., in the amount of $22,279.31.

[fol. 12] In your letter which accompanied this check you stated that the check was "in full payment of the installments of non-permanent water power rentals due July 1, 1934, and installments of permanent mill-power rentals due July 1, 1934 to the Holyoke Water Power Company from the American Writing Paper Company, Inc., in accordance with the terms of the indentures recorded in Hampden County Registry of Deeds."

This check in the amount of $22,279.31 is not in full payment as you have stated and your attention is respectfully directed to the bills sent you by the Holyoke Water Power Company covering the above mentioned rentals.

Yours very truly, Holyoke Water Power Company, by Robert E. Barrett, President.

October 15, 1934.

American Writing Paper Co., Inc., Holyoke, Massachusetts.

GENTLEMEN:

This is to acknowledge receipt on October 5th, 1934, of a check of the American Writing Paper Company, Incorporated, in the amount of $299.25.

In your letter which accompanied this check you stated that the check was in full payment of the installment for three months rental of non-permanent mill powers due on October 1, 1934.

This check in the amount of $299.25 is not in full payment of this installment, in accordance with the terms of the indenture recorded in Hampden County Registry of Deeds, and your attention is respectfully directed to the bill sent you by the Holyoke Water Power Company, covering the above mentioned rental.

Yours very truly, Robert E. Barrett, President.

APPENDIX "C" TO PETITION

January 12, 1935.

American Writing Paper Co., Incorporated, Holyoke, Mass.

GENTLEMEN:

On January 2, 1935, we received a letter from you dated [fol. 13] January 2, 1935, enclosing a check drawn on the Central Hanover Bank and Trust Co., New York, N. Y., in the amount of $19,979.93 payable to our order. In your letter you stated that this check was in full payment of the installments of permanent and non-permanent mill power rentals due on January 1, 1935 under the indentures specified in said letter.

We beg to advise you that the amount of that check, under the terms of the several indentures, does not cover the amount due this company for the installments of rental specified in your letter. That check should have included an amount computed under the provisions of the indentures whereby you should pay us the equivalent in United States currency of 944.76052 troy ounces of fine gold computed at the value of such gold in Holyoke, Massachusetts, on January 2, 1935, when the rental was payable. This value is the price obtainable from the government on January 2, 1935,

when the price was that which had been expressly determined by the Secretary of the Treasury, approved by the President on January 31, 1934, as $35. per troy ounce of fine gold.

We hereby demand from you the additional payment in United States currency, to wit: $13,536.68.

Yours very truly, Robert F. Barrett, Treasurer.

IN UNITED STATES DISTRICT COURT

STIPULATION ON PETITION OF HOLYOKE WATER POWER COMPANY RELATIVE TO PAYMENT OF RENTALS BY THE DEBTOR—Filed March 5, 1935

The parties hereto, the Holyoke Water Power Company and the American Writing Paper Company, Incorporated, hereby stipulate and agree that the former may collect as a payment *pro tanto* the check received by it on January 2, 1935, for $19,979.93 as set out in its petition in this matter filed January 18, 1935, without prejudice to or waiver of its right to establish and prove in the pending proceedings in this court its claim for, and to collect by suit or otherwise, the balance, if any, of the amount of said rentals which became due on January 1, 1935, over and above the amount [fol. 14] of said check, with interest on any such balance but without interest on the amount of said check, and notwithstanding any condition contained in the debtor's letter of January 2, 1935, copy of which is annexed to said petition, that said check constituted full payment of the instalments of rentals due on said January 1, 1935; and without prejudice to or waiver of the right of the American Writing Paper Company, Incorporated, to establish and prove in the pending proceedings in this court or in defense of any such suit in this court or otherwise that the amount of said check represented the full amount due from it on January 1, 1935, as rentals under said indentures set out or referred to in said petition and in accordance with the terms and provisions thereof

March 5, 1935.

Warren, Garfield, Whiteside & Lamson, Avery, Gaylord, Healy & Button, by B. W. W., Attornevs for Holyoke Water Power Company. Choate, Hall & Stewart, Attorneys for American Writing Paper Company, Incorporated.

In United States District Court

Amended Answer of American Writing Paper Company, Incorporated, to Petition of Holyoke Water Power Company Relative to Payment of Rentals—Filed April 9, 1935

The American Writing Paper Company, Incorporated, the above-named debtor, answering the petition of the Holyoke Water Power Company filed herein on January 18, 1935, having heretofore filed an answer, as herein ordered, on or before February 1, 1935, respectfully moves that it may file the following amended answer in lieu thereof:

(1) The debtor admits the allegations of paragraph 1 of the said petition.

(2) The debtor admits the allegations of paragraph 2 of the said petition.

(3) The debtor admits the allegations of paragraph 3 of the said petition.

[fol. 15] (4) The debtor says that on March 5, 1935, the parties made a stipulation relative to the check received by the petitioner from the debtor on January 2, 1935, which has been filed herein, and that thereafter the petitioner deposited the said check.

The debtor admits the receipt of a letter from the petitioner on or about January 12, 1935, a copy of which is annexed to the petition as "Appendix C".

The debtor denies the materiality or relevance of the Provisional Regulations issued under the Gold Reserve Act of 1934 by the Secretary of the Treasury.

(5) The debtor denies each and every allegation contained in paragraph 5 of the petition.

(6) The debtor neither admits nor denies the statements contained in paragraph 6 of said petition and leaves the petitioner to establish the same so far as they may be material herein.

(7) And for further answer the debtor says that the sums which it has already tendered and paid to the petitioner and which the petitioner has already received in payment of the said rentals as set forth in paragraph 3 of the

petition constituted full and sufficient payment of the same, and that the petitioner is not entitled to anything further on the same.

Wherefore the debtor respectfully prays that all and several the prayers of the petition be forthwith denied and that this Honorable Court grant the debtor such other and further relief as may be just and proper in the premises.

American Writing Paper Company, Inc., by its Attorneys, Choate, Hall & Stewart.

April 8, 1935. The within answer may be filed.
Warren, Garfield, Whiteside & Lamson, Attorneys for the Plaintiff.

[fol. 16] In United States District Court

Statement of Evidence

Testimony Reduced to Narrative Form—Filed August 24, 1935; Approved September 27, 1935

Evidence for the Plaintiff

The testimony of Alexander B. Ferguson was substantially as follows:

He was cashier and accountant for the Holyoke Water Power Company and made out the bills and kept the accounts of the rentals due from the owners of the properties subject to rental payments to the Holyoke Water Power Company including the American Writing Paper Company. In connection with making out the bills he had occasion to compute the equivalents of gold called for in the indentures of the company, and, over the objection of counsel for the debtor, he was allowed to testify that he did so by the following method. He first arrived at the weight of pure gold in the dollar mentioned in the indenture, which he found to be .048375 troy ounces. He then multiplied the number of dollars mentioned in the indenture by the figure thus found, thus arriving at the number of ounces of gold due. The gold dollar consisted of 25.8 grains of .9 fine gold, the

equivalent of which in pure gold is 23.22 grains. There are 480 grains in a troy ounce. Thus, a quantity of gold equal in amount to $1,500 of the old weight would be 72.5625 troy ounces of pure gold, which would, at $35 per troy ounce, amount to $2,539.69. The amounts stated in the petition as having been paid are correct. The amounts which would be due on each rental date according to this method of computation are:

July 1, 1934—$37,409.23, in which was included by mistake a payment of $450 made by the debtor to the petitioner, and representing a rental payment under an indenture not in question in this suit.

October 1, 1934—$507.13.

January 1, 1935—$33,516.61, in which is likewise included a payment of $450 of the same nature as that above mentioned.

The differences between the amounts due on each of the three above mentioned dates, according to this method of computation and to the method employed by the debtor are, respectively:

[fol. 17]

July 1, 1934	$15,129.92
October 1, 1934	207.88
January 1, 1935	13,536.68

The total of these three figures, or $28,874.48, represents the difference between the gold equivalent computed upon the basis above described and the total amounts received from the debtor, no part of which difference has been paid.

The deductions from non-permanent mill power rentals representing rebates for periods during which power was not supplied were computed by the petitioner by the same method; the debtor, on the contrary, has computed the deductions upon the basis of $20.67 per ounce. The amounts of deprivation for which rebates are allowable are, however, agreed upon.

Upon cross examination by counsel for the debtor, Mr. Ferguson testified that the gross number of ounces of pure gold that the indentures called for on the several dates and

the corresponding amounts representing rebates for deprivation of power were as follows:

July 1, 1934		1089.64688 troy ounces.
	rebate	33.66888 troy ounces.
	net	1055.97800 troy ounces.
October 1, 1934		21.67675 troy ounces.
	rebate	7.27947 troy ounces.
	net	14.39728 troy ounces.
January 1, 1935		1089.64688 troy ounces.
	rebate	144.88649 troy ounces.
	net	944.76039 troy ounces.

The standard of weight and fineness taken as the basis for the witness' computation was that of the gold coin of the year 1894, or 25.8 ounces .9 fine.

At the request of counsel for the debtor, the witness then gave the results of an alternative method of computation by which he ascertained the number of ounces of gold .9 fine called for by the indentures instead of the number of ounces of pure gold as in the first method hereinbefore described. [fol. 18] The numbers of ounces of gold .9 fine called for by the indentures on the several dates were as follows:

July 1, 1934		1210.71875 troy ounces.
	rebate	37.41 troy ounces.
	net	1173.30875 troy ounces.
October 1, 1934		24.1875 troy ounces.
	rebate	8.0883 troy ounces.
	net	16.0992 troy ounces.
January 1, 1935		1210.71875 troy ounces.
	rebate	160.98501 troy ounces.
	net	1049.73374 troy ounces.

$31.50 per troy ounce is the price of .9 fine gold which is the equivalent of the price of $35 an ounce for pure gold.

Multiplying each of the three numbers of net ounces, arrived at as above, by $31.50 gives the same numbers of dollars which resulted from the first alternative method of calculation, namely $36,959.23, $507.13, and $33,066.61.

HUGH D. SPAULDING testified substantially to the following effect, his qualifications as an expert being admitted:

He was secretary of Handy & Harman, dealers in gold, silver and platinum, with whom he had been connected for over thirty-two years. The business of Handy & Harman is that of buying the metals and supplying them to fabricators and people of that kind throughout the country. The firm quotes daily what is known as the official quotation of silver, which is fixed by the witness and is accepted by the mines and smelting companies as a settlement basis for the silver content of ores. The firm has a federal license to deal in gold and the witness is quite familiar with the operations under federal licenses. The witness's firm does not import gold in its business.

The rest of the witness's testimony was over the objection of counsel for the debtor, as follows:

Some Americans do, however, import gold from London. An individual could, without a license, buy gold in the Lon- [fol. 19] don market and also purchase sterling exchange to pay for the gold, could have the gold shipped to this country, and upon arrival declare it with the customs authority and make a deposit in the assay office for payment. He could not, however, take it out of the custody of the customs authority. Upon making a deposit in the United States assay office he would obtain a receipt and upon either the same day or the following day the Government would pay him 90 per cent of its value. Upon weighing and assaying the gold, which would take about a week, he would receive the balance on the basis of $35 per ounce less ¼ of 1 per cent and a deduction for refining charges, which would depend upon the amount of bas- metals contained in the gold.

The witness's firm receives daily from the London market the official quotation of the price of pure gold in

London on that date. July 1, 1934, was a Sunday. The London quotation on June 30, 1934, was 137s. 10½d. The sterling rate, at the time the quotation was received, was 504⅛, so that the equivalent in United States dollars was 34.75; in other words, an ounce of gold would have cost in London $34.75 on that date.

On October 1, 1934, the London price was 141s. 6d; the sterling rate was 492.7/8, of which the equivalent in United States dollars was 34.87.

January 1, 1935, was a holiday in London. On January 2, the London Market quoted 140s. 10½d.; the sterling rate was 493 7/8, and the equivalent in United States dollars therefore 34.79.

On December 31, 1934, the quotation was 141s., the sterling rate was 494, and the United States dollar equivalent 34.83.

On days in the immediate vicinity of July 1 and October 1, 1934, and January 2, 1935, the quotations were substantially the same as upon those several dates.

The London gold market is a free gold market for all the world. If an American had bought gold in London on any of the foregoing dates at the price equivalent in American dollars to the London sterling quotation, there would have been added the expense of packing, carting, insurance, freight, and interest. At a rough estimate these combined [fol. 20] charges would come to about three or four cents an ounce of pure gold.

The debtor presented no evidence other than debtor's Exhibits A and B.

The following exhibits were introduced:

Petitioner's 1—Photostatic copy of typical indenture and proposals between American Writing Paper Company and Holyoke Water Power Company.

Petitioner's 2—Copy of Proclamation No. 2072, dated January 31, 1934, of the President of the United States, certified by the Secretary of State.

Petitioner's 3—Certified copy of the Provisional Regulations issued under the Gold Reserve Act of 1934 by the Secretary of the Treasury, and photostatic copies of the amendments thereto.

Debtor's A—Authenticated copy of certain orders of the Secretary of the Treasury.

Debtor's B—Group of forms referred to in the regulations, Exhibit 3, i. e. T. D. 12, 19, 20, 21, 22, 23 and 24.

Holyoke Water Power Company, by Warren, Garfield, Whiteside & Lamson, Avery, Healy & Button, Bentley W. Warren, Nathan P. Avery, James M. Healy, Donald C. Starr, its Attorneys.

Assented to. Charles P. Curtis, Jr.

September 27, 1935. Narrative form of testimony approved.

Elisha H. Brewster, United States District Judge.

[fol. 21] PETITIONER'S EXHIBIT 1

An Indenture made this first day of March A. D. 1895, by and between the Holyoke Water Power Company, a Corporation duly established and doing business at Holyoke, in the County of Hampden and Commonwealth of Massachusetts, of the one part and the Crocker Manufacturing Company, a Corporation duly established and doing business at said Holyoke, of the other part.

Whereas the said Crocker Manufacturing Company, has agreed to purchase of said Holyoke Water Power Company certain water rights as hereinafter and in the annexed proposals described, which proposals with all the terms, conditions, agreements and other matters therein contained, are hereby adopted by the parties and made a part of this Indenture, excepting always the eighteenth article therein contained, which it is agreed shall make no part of this Indenture; and also that the grantor shall not be obliged to reserve the full amount of rent specified in the Fifth Article of said Proposals, on sales or leases of mill-powers, situated on the lower level and canals; and whereas, said water-rights are to be conveyed in manner and form so as to give said Crocker Manufacturing Company the right to use said mill-powers as appurtenant to the mill-sites conveyed to the said Crocker Manufacturing Company by deeds dated March 31st, 1871, and October 16th 1890, and Recorded in Hampden County Registry of Deeds in Book 282—Page 167 and Book 468 Page 542 respectively.

Now, therefore, the said Holyoke Water Power Company, in consideration of Ten Dollars and other valuab' considerations paid to it by the said Crocker Manufacturing Company, the receipt whereof is hereby acknowledged, and of the rent hereinafter reserved, and of the other agreements of the said Crocker Manufacturing Company, does hereby grant, bargain, sell and convey unto the said Crocker Manufacturing Company the right to take and use in and upon the land aforesaid and as appurtenant thereto ten (10) non-permanent 24 hour mill-powers as hereinafter limited and described from the grantors Second Level Canal whenever in the opinion of the Hydraulic Engineer of the Grantor or such officer or agent of the grantor as may [fol. 22] have the matter in charge, there is sufficient water flowing in the Connecticut River per second, to permit such use in excess of the sum of the three quantities named, hereafter, viz:

1. The quantity of water per second needed to supply the lawful demands of all persons or corporations now having the right to use said water, from the second level canal, heretofore made or granted by said Holyoke Water Power Company, or those under whom it claims, including herein the two (2) mill-powers appurtenant to the mill called the New York Mill, conveyed to the Holyoke Water Power Company, by deed dated February 7th, A. D. 1882.

2. The quantity of water per second which may be needed to supply the lawful demands of all persons or corporations now having the right or agreements for rights to use said water, from the third or lower level canal, heretofore made or granted by said Holyoke Water Power Company or those under whom it claims, which may be in excess at any time of the quantities supplied to said Third Level by the Mills in operation on the said second level canal.

3. The quantity of water per second equal to fifty per centum of the mill-powers heretofore granted to be drawn from said second level canal which are not designated in the grant thereof as non-permanent powers and fifty per centum of the second quantity above named, which is not designated in the grant thereof as non-permanent powers.

A non-permanent 24 hour mill-power, as conveyed hereby being the right to take from the grantors said second level canal, during the 24 hours of the day, but exclud-

ing Sundays and Legal Holidays, the same quantity of water per second that might be drawn per second under a grant of a mill-power as defined in the accompanying Proposals, subject, however, to the limitations and restrictions set forth in this Indenture and in said Proposals.

The grantor reserves to itself, the right, in addition to the other reservations in this Indenture contained, and the said grantee, granting such right to the grantor, its successors and assigns, to enter upon the premises above described at any and all times, for the purpose of shutting off the water and to shut off the water the use of which is granted under the name of ten non-permanent 24 hour mill-[fol. 23] powers, whenever in the opinion of the Hydraulic Engineer or of such other officer or agent aforesaid there is not sufficient water flowing in said river to permit its use according to the terms of this grant.

It being understood and agreed hereby, that whenever the water is shut off as aforesaid, the grantee shall not open or suffer the gates or other appurtenances which shut off the water to be again opened, without the consent of the grantor or its proper agent as aforesaid, in writing first obtained. If said gates or other appurtenances for shutting off the water are opened or suffered to be open by the grantee its servants or agents, during the time they should be shut as hereinbefore provided, the grantee shall pay to the grantor two-hundred and fifty ($250) dollars for each occasion when said gates or other appurtenances are so opened or suffered to be open; it being hereby agreed by the parties hereto, that said sum is the amount to be paid as the liquidated damages for each opening or suffering to be open of said gates or appurtenances as aforesaid. But said sum shall be taken to be the damage for the opening or suffering to be open, said gates or other appurtenances only, and the grantor shall have the right, in addition thereto, to recover from the grantee, its successors and assigns, any and all damages which may be occasioned to the grantor or its property or for which said grantor may be made liable by said unlawful opening or suffering to be open of said gates or other appurtenances.

And the said grantor may also lock and seal the said gates or other appurtenances, whenever it shuts off the water.

To have and to hold, the above granted water rights to the said Crocker Manufacturing Company, its successors and assigns, to its and their use and behoof forever, subject, however, to the agreements, terms, conditions and all other matters and things in said annexed Proposals, and in this Indenture set forth as obligatory upon the Grantee, its successors and assigns, or their estates, and among other things, yielding and paying to the said Holyoke Water Power Company and its successors and assigns forever, as rent for each of the first three 24 hour non-permanent mill-powers above granted a quantity of gold which shall be equal in amount to fifteen hundred ($1500) dollars of the gold coin of the United States of the standard of weight [fol. 24] and fineness of the coinage of the year one thousand eight hundred and ninety-four, or the equivalent of this commodity in United States currency, for each and every year, payable in equal semiannual payments. Said grantee its successors and assigns shall also pay to said grantor and its successors or assigns forever as rent for each of the remaining seven 24 hour non-permanent mill-powers above granted a quantity of gold which shall be equal in amount to six hundred ($600) dollars of the gold coin of said United States of the standard of weight and fineness of the year above mentioned or the equivalent of this commodity in United States currency for each and every year, payable in equal semi-annual payments. The first payment of a quantity of gold which shall be equal in amount to forty three hundred and fifty ($4350) dollars of gold coin such as specified or the equivalent as aforesaid to be made on the first day of July A. D. 1896, and a like payment to be made every six months thereafter, viz: On the first day of January and July of every year thereafter. But it is agreed hereby, that the grantor will rebate or pay back to the grantee, at each and every semi-annual payment for each day, and proportional amount for fractions of a day, during which said grantee has been deprived of the use of said seven 24 hour non-permanent mill-powers in the manner above recited, or a part thereof, during the course of the six months then last past, a quantity of gold which shall be equal in amount to two (2) dollars of the gold coin such as above specified or the equivalent as above specified for each of said seven 24 hour non-permanent mill-powers of the use of which it or they may have been so de-

prived, and said grantor will in like manner rebate or pay back to the grantee at each and every semi-annual payment for each day, and a proportional amount for fractions of a day during which said grantee has been deprived of the use of said three 24 hour non-permanent mill-powers in the manner above recited, or a part thereof, during the course of the six months then last past, a quantity of gold which shall be equal in amount to five (5) dollars of the gold coin such as specified, or the equivalent as above specified for each of said three (3) mill-powers of the use of which it or they may have been so deprived.

And the said Holyoke Water Power Company, for itself, [fol. 25] its successors and assigns, covenant with the said Crocker Manufacturing Company, its successors and assigns, that said water rights hereby granted shall be maintained as herein proposed and provided forever.

And this grant is made upon the express condition and limitation, that the present stockholders, or any persons or corporations that may hereafter be or become stockholders of or in the said Holyoke Water Power Company, shall not be holden, bound or liable upon, or for any of the covenants, stipulations, conditions or agreements herein contained, or any thereof, or for any breach, non-fulfillment or non-observance thereof, or for any damage or loss which may be sustained or incurred by reason of such breach, non-fulfillment or non-observance; but, therefor, the said Holyoke Water Power Company in its corporate capacity, and not otherwise, shall be alone holden, obligated, bound and obliged.

The Crocker Manufacturing Company hereby grants to said Holyoke Water Power Company its successors and assigns, the right, at all times, to enter into and upon the above described premises to measure and compare the quantity of water used and wasted or suffered to waste with the quantity hereby granted.

And the said Crocker Manufacturing Company for itself, its successors and assigns hereby covenants with the said Holyoke Water Power Company that it will keep, fulfill and observe all and singular the covenants, stipulations and conditions herein contained or referred to on its part to be kept, performed and fulfilled; and that it will not nor shall its successors or assigns at any time hereafter, or for any cause or reason, make, or suffer, or cause to be made, on

any person or persons who now are, or who may hereafter be stockholder or stockholders of or in the said Holyoke Water Power Company, any claim or demand for or by reason of any breach of the covenants, stipulations or agreements herein contained or referred to on the part of the said Holyoke Water Power Company, but will look and have recourse only, to the said Holyoke Water Power Company in its Corporate capacity, and not otherwise, the present and future stockholders of the said Holyoke Water Power Company being hereby forever relieved, exempted [fol. 26] and discharged from any and all individual and personal liability or responsibility upon or for any of the covenants, stipulations and agreements herein contained or referred to; and that it, its successors or assigns, will pay or cause to be paid, the rent hereinbefore reserved to be paid at the times and in the manner hereinbfore mentioned.

And the said parties hereto mutually covenant, that they will respectively keep, observe and fulfill all the terms, covenants, conditions and other matters and things in the said annexed proposals set forth as respectively obligatory upon them or their respective successors and assigns always excepting said Eighteenth Article of said Proposals, and the obligations in Article V., to reserve the rent therein specified for mill-powers situated on the lower level and canals.

In witness whereof, the said Holyoke Water Power Company has caused its Corporate Seal to be affixed to this, and to another instrument of like tenor and date, and has caused the same to be signed by its Treasurer, the day and year first above mentioned.

And the said Crocker Manufacturing Company has caused its Corporate Seal to be affixed to this and one other instrument of like tenor and date, and has caused the same to be signed by its Treasurer the day and year first above mentioned.

Holyoke Water Power Company, by Edward S. Waters, Treasurer. (Seal.) Crocker Manuf'g Co., per C. A. Crocker, Treas. (Seal.)

Signed, sealed and delivered in presence of J. M. Jackman to both.

Approved. Gideon Wells, John B. Stebbins, Francis Goodwin, Chas. M. Beach, John M. Wheelwright, Directors Holyoke Water Power Co.

[fol. 27] COMMONWEALTH OF MASSACHUSETTS,
Hampden, ss:

March 9th, A. D. 1895.

Then the above named, Edward S. Waters Treasurer, appeared and acknowledged the within instrument by him executed to be the free act and deed of the Holyoke Water Power Company. Before me

J. M. Jackman, Justice of the Peace.

HAMPDEN, ss:

April 1st, A. D. 1895.

Then the above named C. A. Crocker Treasurer, appeared and acknowledged the within instrument by him executed to be the free act and deed of the Crocker Manufacturing Company. Before me

J. M. Jackman, Justice of the Peace.

Rec'd April 2, 1895 and Recorded in Hampden County Registry of Deeds Book 533 Page 293.
Attest James R. Wells, Register.

Proposals by The Holyoke Water Power Company, for the Sale of their Mill Powers and Land, at Holyoke, Massachusetts.

Article I. The Holyoke Water Power Company propose to sell their mill powers situate at Holyoke, on the Connecticut river, on the following terms and conditions, to be varied as the parties may agree in the deed. For the price that may be agreed upon they will grant a parcel of land, to be described in the deed, with one or more mill powers of the quantity of water described below, and with the covenants of title and warranty as in the annexed deed.

Art. II. Each mill power at the respective falls is declared to be the right, during sixteen hours in a day, to draw from the nearest canal or water course of the grantors, and through the land to be granted, thirty-eight cubic feet of water per second at the upper fall, when the head and

fall there is twenty feet—or, a quantity inversely proportionate to the height, at the other falls; and in order to pre- [fol. 28] vent disputes as to the power of each mill privilege in the variations of the height of the water from changes of the seasons or other causes, it is understood and declared that the quantity of water shall be varied in proportion to the variation of the height, one foot being allowed and deducted from the height of the actual head and fall, and also from that with which it is compared before computing the proportion between them; thus on a head and fall of thirty-two feet, the quantity of water to be used would be twenty-three cubic feet and nine thirty-first parts of a cubic foot per second. And the respective parties, where either has any lawful interest therein, may at all reasonable times, in a peaceable manner, and after due notice to the principal steward or agent then on duty at any mill, enter the raceway thereof, to measure and compare the quantity of water used with the quantity granted, and in the measurement all wastage shall be included—and may also adopt and use such other mode of making or verifying the said measurement as the circumstances of each particular case may require.

Art. III. The grantors are to construct and forever keep in good repair the principal canals, and from time to time, as occasion may require, they are to remove and clear out obstructions that may accumulate therein, always excepting ice. They are also forever to maintain the dam in the Connecticut River, at the head of said principal canals, of such length and height as may be necessary, and as they may lawfully do, in order to turn the water into the canals.

Art. IV. The flumes and raceways of every mill are to be made, maintained, belong to, and be kept in good repair by the respective grantees, and each raceway shall be well spiled at the lower end thereof; and they are also to make and maintain a good and substantial gate at the head of each flume, which shall be so constructed, that when requisite, it may be closed in such a manner as to prevent water from flowing into the flume.

Art. V. In order to continue in the grantors an interest in common with the grantees, for the preservation and support of the mill powers which may be granted, and to secure a fund to indemnify the grantees for expenses which may

be incurred by them for making repairs, if the grantors should improperly neglect to make them, it is proposed [fol. 29] that part of the consideration of every sale, and all that is to be allowed the grantors for the repairs, &c., by them assumed, should be paid or secured to them in the form of a reservation of rent. It is therefore declared, that each mill power, with the land to which it is annexed, shall forever be subject to a perpetual annual rent of at least two hundred and sixty ounces troy weight of silver, of the present standard fineness of the silver coin of the United States, or an equivalent in gold, at the option of the grantee at the time of payment; which rent is to be paid in yearly payments forever, free from all charges or deduction whatever for taxes or assessments of every description, which may be assessed or levied upon any granted premises, after the making of the deed, all of which are assumed by the grantees; and a perpetual annual rent, at least equal to the above shall be reserved for every mill power hereafter sold.

Art. VI. If any grantee shall sustain any injury from deficiency of water, happening from the grantors granting more water than they can supply, failure of the dam or canal, or any cause whatever, excepting the neglect or misconduct of himself or the willful neglect and misconduct of any other person which the grantors could not lawfully prevent or control, his rent for the privilege injured may cease during the time such deficiency may continue, but no longer; and if such deficiency should happen through the misconduct or willful neglect of the grantors, the grantees shall have a right to recover damages in an action at law against the grantors, in addition to the rent to be withheld as aforesaid.

Art. VII. If any grantee shall suffer damage from want of water from causes not arising from the neglect or misconduct of himself, and which may be removed or remedied, and the grantors shall, after due notice for that purpose, unreasonably fail to remove the obstructions, or remedy the mischiefs, the grantees injured, or any of them, may in the best manner they may be able, remove or remedy the causes of injury at the grantor's expense; and to pay and indemnify them for the expense and charge thereby incurred, such grantees shall, after the expiration of thirty days from the time the amount of such expense

shall have been adjusted and agreed to by the parties, or ascertained by final judgment at law, or by award of ref- [fol. 30] erees, have a lien upon all the rents which may have been reserved to the grantors upon the sale of any mill power, and which may become payable after the expiration of said thirty days, and may demand, sue for, and receive the same, until they shall be fully reimbursed as aforesaid.

Art. VIII. The grantees are not to use more water than granted, nor waste it, nor permit it to be wasted for want of repairs, or through the deficiency of their works or otherwise; and if so wasted, or if more be used than is granted, the grantors may stop the water from entering the flumes, by closing the gates across them, or by any other method, until such waste or excessive use be sufficiently guarded against; and may also at the same time maintain their action at law for damages.

Art. IX. All buildings erected upon any land granted by the annexed deed, more than ten feet in height, are to be of stone or brick, the roofs covered with slate or some incombustible substance, and the covings well secured against fire; and if any other be erected, the grantors or their assigns may enter and abate them, and have any other appropriate remedy.

Art. X. All the land conveyed to the grantees of water power, in connection with the mill sites, shall be held, used and improved for mills, manufactories, or buildings appurtenant thereto, or for such dwelling houses, boarding houses, sheds, and other out-houses, as shall be required for the accommodation of the owners, agents, clerks, overseers, machinists, watchmen or operatives employed in such mills, and not appropriated to any other purpose whatever, nor sold nor alienated except in connection with the mill sites, and subject to all the conditions and restrictions of the original grant.

Art. XI. The grantees are not to use any building for, or to set up or continue any laboratory, powder-mill, furnace or forge, nor any chemical or other works whatever, which may be so noxious or dangerous, from fire or otherwise, as to impair, injure, or endanger the life, safety, health, or reasonable comfort of any person now or hereafter, living or employed in and about the land or works

of the grantors or their assigns or the grantees or assigns of the Hadley Falls Company, or which shall endanger the [fol. 31] buildings, property, or works, now or hereafter to be placed upon the land of the grantors, by themselves or others. And in case any such should be so set up, continued or used, the grantors or their assigns may enter and abate them, and also may sue for damages, and may likewise stop the water, as above mentioned, from passing into the flumes, until such nuisance be removed or discontinued; nor are the grantors or their assigns to set up, continue or use any such on their land so near that of the grantees, as to cause the above described mischiefs, or either of them; and should any such be set up, continued or used, the grantees or their assigns may enter and abate the same, or have any other appropriate remedy therefor, and during the continuance of such nuisance by the grantors or by their assigns, after due notice for discontinuing the same, the grantees suffering thereby, their heirs, successors or assigns, may maintain their action at law or equity, against the party setting up, using or continuing such nuisance; and if the same shall have been set up, used or continued by license from the grantors, shall also be discharged from the payment of the rent accruing during the continuance of such nuisance, but no longer, and the parties may pursue any and all of their said remedies at the same time. Provided, however, that the foregoing agreement to prevent nuisances is not to be understood to prevent the grantors or their assigns from building, using and maintaining machine shops, with the smith's forges, hammers and other things necessary, and pertaining thereto, for making all kinds of machinery, within a reasonable distance of the granted premises; nor to prohibit any grantee or his assigns from setting up and using machine shops, with all things necessary for making and repairing machinery; nor to prohibit either party or his assigns from setting up, using, enlarging, or improving any establishment for bleaching, dyeing, coloring or printing goods, with all things necessary therefor, (excepting dangerous, noxious or offensive works as aforesaid,) and no grantee shall have the right to object to the use of any building for the purposes for which it had been used before or at the time of the deed to such grantee, or to object to any building previously erected, on account of the ma-

terials of which it is composed, or the manner in which it may be built.

Art. XII. If any grantee, his heirs, successors or assigns [fol. 32] shall set up, use or continue any of the above prohibited nuisances, or shall fail to pay the rent duly, and the grantors, their successors or assigns, shall in a proper Court have recovered final judgment for damages for, or on account of such nuisance, or for the rent so in arrear, or damages for the non-payment of such rent, or if in any suit in such Court between the grantors and any of the said grantees, or their respective heirs, successors or assigns, or between either of them and any person doing any act by authority from either of them touching any such nuisance, the fact of setting up, using or continuing any such nuisance by such grantee, or by his successors or assigns, shall have been put in issue, or involved in the trial of any issue, joined in such suit, and it shall have been determined, found or proved that any such nuisance has been set up, used or continued, and the grantee, his heirs, successors or assigns, for the space of ninety days after due notice thereof, shall fail to pay and satisfy the judgment so recovered, touching said rent, or shall fail to remove and discontinue every thing which shall have been determined, found or proved to be such nuisance as aforesaid, then the mill and mill power, with all the land, and buildings attached or belonging thereto, or commonly used therewith, within or upon which any such nuisance shall have been so set up, used or continued, or for which the rent shall have been unduly withheld as aforesaid, with all the privileges and appurtenances belonging to such mill, mill power, land and buildings, shall become so far forfeited, that it shall be lawful for the grantors, or their successors or assigns to enter into and upon the said granted premises, and the same again to have, hold, possess and enjoy as of their, the grantors former estate therein; and such grantee, or his heirs, successors or assigns, and all tenants and persons claiming under him or them, to expel, and put out and remove, and to continue so to hold the same without accountability for rent, unless received, until such judgment or debt for rent or damages, shall have been paid, with interest and until all the costs and expenses of removing and abating every such nuisance shall have been reimbursed to them, together

with all costs, charges and expenses incurred in thus entering and taking and holding possession; and if such payments and reimbursements shall not be made within three [fol. 33] years from the time of the said entry, then the grantors or their successors or assigns, shall, at the expiration of that period, continue to hold the granted premises, so entered upon, to the sole use of themselves, their heirs, successors and assigns forever, without any right of redemption by the said grantee, his heirs, successors or assigns. But nothing herein contained shall be construed to bar or otherwise prevent any right of action which the grantors may have for the recovery of said rent and damages, but the remedy herein provided shall be accounted as only concurrent with that of such action or actions.

Art. XIII. In case any grantee shall bona fide sell or convey any mill power with the land originally granted therewith, or when several mill powers are granted in the same deed, and the land conveyed with them is not therein specially divided, apportioned and attached to each, if the grantee shall bona fide sell or convey any one or more of them with such part and portion of the land as shall be necessary and convenient for the profitable use and employment of the power or powers sold, leaving sufficient for the profitable use and employment of the power or powers unsold, the assignees or purchasers shall be holden to pay the rent of the mill power and land so sold, and to perform all the agreements, covenants and conditions relating thereto, and connected therewith; and the grantors will not hold the original grantees responsible therefor, unless such conveyance or assignment be made fraudulently, with the intent to defeat the grantors of any of their said rents, or of their remedies for breach of any agreements, or unless the said grantees shall reserve a rent out of the premises to themselves or others, or shall retain some estate, title, or interest therein; Provided such assignee or purchaser shall in some legal mode, bind himself and his heirs, successors and assigns to the said grantors, their successors or assigns to perform, fulfill, keep and observe, all the terms, conditions, covenants, and all other matters and things touching the property and estate assigned, which were obligatory upon the original grantee, his heirs, successors or assigns. And in case of any sale as aforesaid, of any one or more of several mill powers originally conveyed by the same deed,

with the proper and convenient sale of the land, as before stated, and the compliance by the assignee or purchaser [fol. 34] with the terms of the foregoing proviso, the premises so by such sale severed and divided, as well those so sold, as those unsold, shall be, and be considered in all respects as if the same had been originally severed in like manner, and had been granted and conveyed by the said grantors in several and distinct conveyances, and all the covenants, agreements, conditions and other things of and concerning the whole of the granted premises, shall apply to each part of said premises after such severance, in like manner as if each of said parts had been conveyed alone, the rent however reserved for all the powers granted in the original deed, to be divided proportionably to and among the powers sold and those unsold.

Art. XIV. The grantors reserve to themselves, their successors and assigns, the right to alter, modify, enlarge or expunge any of the agreements, terms, conditions or parts of the foregoing proposals, from time to time, as they may think proper, in their bargains and sales to, and agreements with subsequent purchasers, so far as to affect only the mutual rights and obligations of the grantors and such subsequent purchasers; except that a rent at least equal to the above shall be reserved for every mill power hereafter sold, unless all the prior grantees shall otherwise agree.

Art. XV. The respective heirs or successors, and the assigns of the parties, are declared to be entitled to all the rights, advantages, and forfeitures, and bound by all the obligations, duties and conditions of, and remedies against, their original parties respectively, as hereinbefore set forth, unless otherwise expressed.

Art. XVI. The stockholders, present or future, of the Holyoke Water Power Company, shall not in any way or manner, or at any time, or for any cause or reason, be holden or made individually or personally accountable upon any grants, covenants, stipulations, or agreements made or entered into by the said Holyoke Water Power Company, nor for any neglect, nonfeasance, omission, or malfeasance of the said Holyoke Water Power Company, but shall be forever exempted and relieved from all such personal liability.

Art. XVII. The grantors reserve the right to draw off the water from their canals, for the purpose of clearing out, removing obstructions therein, or repairing the same, [fol. 35] and also whenever necessary for the purpose of prosecuting and continuing the operations of the Holyoke Water Power Company, their successors and assigns, in the building of mills, and constructing the water works connected therewith, in the way usually done in similar cases, and with as little interruption in the use of the water powers conveyed to the respective grantees as the circumstances and nature of the cases may from time to time admit of. They also reserve the right to enter upon the premises of all grantees, for the purpose of laying down and repairing gas and water pipes, and for the purpose of constructing, altering or repairing such water courses and drains as a due regard to health and convenience may require. They also reserve all gas and water pipes which may exist at the time of the sale.

Art. XVIII. Any corporation or person purchasing any mill site and mill power of the Holyoke Water Power Company, shall have the right at its pleasure, to relieve itself from the payment of the annual rent above mentioned, by paying to the Holyoke Water Power Company, their successors and assigns, a sum of money sufficient to produce at the rate of six per centum per annum, an amount equal to the amount of said annual rent, which amount of money so paid shall be received, invested and retained by the Holyoke Water Power Company, its successors and assigns, as a fund towards defraying the charges and expenses of maintaining the water power and water privileges of said Company, its successors and assigns; and said fund shall be subject to the same liens for the same purposes as the rent for which it is substituted is made subject.

Art. XIX. All mill sites, mill powers and lands sold, granted, leased or conveyed to any person or corporation by the Holyoke Water Power Company are to be taken, received and held by the grantees, lessees, or purchasers thereof, and by their successors, heirs, and assigns, subject to, and with the express reservation of the legal rights of the prior grantees of the Hadley Falls Company which are in no way to be affected or changed by such sale, grant, lease

or conveyance; and, also, subject to the express condition, and to be sold and conveyed on the terms, conditions, provisos and agreements, set forth and contained in the deed, and proposals thereto annexed, of George W. Lyman, Francis Bacon, and Agustus H. Fiske, receivers of the [fol. 36] Hadley Falls Company, to Alfred Smith, bearing date on the twelfth day of March, in the year one thousand eight hundred and fifty-nine, and recorded in the Registry of Deeds for the county of Hampden, in Book 196, pages 131 and following, for the full understanding and effect whereof, reference is hereby made to said deed and proposals, and to the record thereof. And every clause, covenant, or exception contained either in these proposals or in the annexed Indenture, is to be taken and construed, consistently with the requirements of the said deed to Alfred Smith and so as not to contravene the true intent and meaning of the same or of any part thereof.

[On back:] Holyoke Water Power Co., Crocker Mfg. Co. Hampden County Registry of Deeds, Apr. 2, 1896. Received 4 H 5 M p. m.

PETITIONER'S EXHIBIT 2

No. 853

UNITED STATES OF AMERICA,
Department of State:

To all to whom these presents shall come, Greeting:

I Certify That the document hereunto annexed is a true copy from the original in the archives of this Department.

(Proclamation No. 2072, dated January 31, 1934.)

In testimony whereof, I, Cordell Hull, Secretary of State, have hereunto caused the Seal of the Department of State to be affixed and my name subscribed by the Chief Clerk of the said Department, at the City of Washington, in the District of Columbia, this eighteenth day of February, 1935.

Cordell Hull, Secretary of State, by C. E. Maclackran, Chief Clerk. (Seal.)

[fol. 37] By the President of the United States of America:

A Proclamation

Whereas, by virtue of Section 1 of the Act of Congress approved March 14, 1900 (31 Stat. L. 45), the present weight of the gold dollar is fixed at twenty five and eight tenths grains of gold nine tenths fine; and

Whereas, by Section 43, Title III of the Act approved May 12, 1933 (Public, No. 10, 73d Congress), as amended by Section 12 of the Gold Reserve Act of 1934, it is provided in part as follows:

"Whenever the President finds, upon investigation, that (1) the foreign commerce of the United States is adversely affected by reason of the depreciation in the value of the currency of any other government or governments in relation to the present standard value of gold, or (2) action under this section is necessary in order to regulate and maintain the parity of currency issues of the United States, or (3) an economic emergency requires an expansion of credit, or (4) an expansion of credit is necessary to secure by international agreement a stabilization at proper levels of the currencies of various governments, the President is authorized, in his discretion—

"(a) To direct the Secretary of the Treasury to enter into agreements with the several Federal Reserve banks and with the Federal Reserve Board whereby the Federal Reserve Board will, and it is hereby authorized to, notwithstanding any provisions of law or rules and regulations to the contrary, permit such reserve banks to agree that they will, (1) conduct, pursuant to existing law, throughout specified periods, open market operations in obligations of the United States Government or corporations in which the United States is the majority stockholder, and (2) purchase directly and hold in portfolio for an agreed period or periods of time Treasury bills or other obligations of the United States Government in an aggregate sum of $3,000,000,000 in addition to those they may then hold, unless prior to the termination of such period or periods the Secretary shall consent to their sale. No suspension of reserve re-
[fol. 38] quirements of the Federal Reserve banks, under the terms of section 11(c) of the Federal Reserve Act, necessitated by reason of operations under this section,

shall require the imposition of the graduated tax upon any deficiency in reserves as provided in said section 11(c). Nor shall it require any automatic increase in the rates of interest or discount charged by any Federal Reserve bank, as otherwise specified in that section. The Federal Reserve Board, with the approval of the Secretary of the Treasury, may require the Federal Reserve banks to take such action as may be necessary, in the judgment of the Board and of the Secretary of the Treasury, to prevent undue credit expansion.

"(b) If the Secretary, when directed by the President, is unable to secure the assent of the several Federal Reserve banks and the Federal Reserve Board to the agreements authorized in this section, or if operations under the above provisions prove to be inadequate to meet the purposes of this section, or if for any other reason additional measures are required in the judgment of the President to meet such purposes, then the President is authorized—

* * * * * * *

"(2) By proclamation to fix the weight of the gold dollar in grains nine tenths fine and also to fix the weight of the silver dollar in grains nine tenths fine at a definite fixed ratio in relation to the gold dollar at such amounts as he finds necessary from his investigation to stabilize domestic prices or to protect the foreign commerce against the adverse effect of depreciated foreign currencies, and to provide for the unlimited coinage of such gold and silver at the ratio so fixed, or in case the Government of the United States enters into an agreement with any government or governments under the terms of which the ratio between the value of gold and other currency issued by the United States and by any such government or governments is established, the President may fix the weight of the gold dollar in accordance with the ratio so agreed upon, and such gold dollar, the weight of which is so fixed, shall be the standard unit of value, and all forms of money issued [fol. 39] or coined by the United States shall be maintained at a parity with this standard and it shall be the duty of the Secretary of the Treasury to maintain such parity, but in no event shall the weight of the gold dollar be fixed so as to reduce its present weight by more than 50 per centum. Nor shall the weight of the gold dollar be fixed in

any event at more than 60 per centum of its present weight. The powers of the President specified in this paragraph shall be deemed to be separate, distinct, and continuing powers, and may be exercised by him, from time to time, severally or together, whenever and as the expressed objects of this section in his judgment may require; except that such powers shall expire two years after the date of enactment of the Gold Reserve Act of 1934 unless the President shall sooner declare the existing emergency ended, but the President may extend such period for not more than one additional year after such date by proclamation recognizing the continuance of such emergency"; and

Whereas, I find, upon investigation, that the foreign commerce of the United States is adversely affected by reason of the depreciation in the value of the currencies of other governments in relation to the present standard value of gold, and that an economic emergency requires an expansion of credit; and

Whereas, in my judgment, measures additional to those provided by subsection (a) of said Section 43 are required to meet the purposes of such Section; and

Whereas, I find, from my investigation, that, in order to stabilize domestic prices and to protect the foreign commerce against the adverse effect of depreciated foreign currencies, it is necessary to fix the weight of the gold dollar at 15 5/21 grains nine tenths fine,

Now, therefore, be it known that I, Franklin D. Roosevelt, President of the United States, by virtue of the authority vested in me by Section 43, Title III of said Act of May 12, 1933, as amended, and by virtue of all other authority vested in me, do hereby proclaim, order, direct, declare and fix the weight of the gold dollar to be 15 5/21 grains nine tenths fine, from and after the date and hour of this proclamation. The weight of the silver dollar is not altered or affected in any manner by reason of this proclamation.

[fol. 40] This proclamation shall remain in force and effect until and unless repealed or modified by act of Congress or by subsequent proclamation; and notice is hereby given that I reserve the right by virtue of the authority vested in me to alter or modify this proclamation as the interest of the United States may seem to require.

In witness whereof I have hereunto set my hand [and] caused the seal of the United States to be affixed.

Done in the City of Washington at 3.10 o'clock in the afternoon, Eastern Standard Time, this 31 day of January, in the year of our Lord one thousand nine hundred and thirty-four, and of the Independence of the United States the one hundred and fifty-eighth.

The President:

Franklin D. Roosevelt.

Cordell Hull, Secretary of State.

PETITIONER'S EXHIBIT 3

(Certified Copy of the Provisional Regulations Issued Under the Gold Reserve Act of 1934, by the Secretary of the Treasury and Photostatic Copies of the Amendments Thereto)

UNITED STATES OF AMERICA,
Treasury Department Washington:

January 31, 1935.

Pursuant to the provisions of Section 661, Chapter 17, Title 28 of the United States Code (Section 882 of the Revised Statutes of the United States), I hereby certify that the annexed printed copy of the Provisional Regulations issued under the Gold Reserve Act of 1934 and the photostatic copies of the Amendments thereto are true copies, the originals of which are on file in this Department.

In witness whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

F. A. Birgfeld, Chief Clerk, Treasury Department.
J. W. P. (Seal.)

[fol. 41] U. S. Treasury Department, Office of the Secretary

Provisional Regulations

Issued under the Gold Reserve Act of 1934

January 30 and 31, 1934

(Seal Office of the Secretary.)

[fol. 42]

Treasury Department,
Office of the Secretary,
January 31, 1934.

Provisional Regulations

Issued under the Gold Reserve Act of 1934

Article I. General Provisions

Section 1. Authority for regulations.—These regulations, deemed necessary and proper by the Secretary of the Treasury to carry out the purposes of the Gold Reserve Act of 1934, approved January 30, 1934, are issued by the Secretary of the Treasury, with the approval of the President, under authority of said Act.

Sec. 2. Scope.—Articles II, III, IV, and V of these regulations refer particularly to section 3 of the Gold Reserve Act of 1934; and articles VI and VII refer particularly to sections 8 and 9, respectively, thereof.

The provisions of these regulations may be revoked or modified at any time and any license outstanding at the time of such revocation or modification shall be modified thereby to the extent provided in such revocation or modification.

Sec. 3. Titles and subtitles.—The titles and subtitles of these regulations are inserted for purposes of ready reference and are not to be construed as constituting a part of these regulations.

Sec. 4. Definitions.—As used in these regulations, the term—

"Act" means the Gold Reserve Act of 1934, approved January 30, 1934.

"United States" means the Government of the United States, or, where used to denote a geographical area, means

the continental United States and all other places subject to the jurisdiction of the United States.

"Continental United States" means the States of the United States, the District of Columbia, and the Territory of Alaska.

"Currency of the United States" means currency which is legal tender in the continental United States, and includes United States notes, Treasury notes of 1890, gold certificates, silver certificates, Federal Reserve notes, and circulating notes of Federal Reserve banks and national banking associations.

"Person" means any individual, partnership, association, or corporation, including the Federal Reserve Board, Federal Reserve banks, and Federal Reserve agents.

[fol. 43] "Mint" means a United States mint or assay office, and wherever authority is conferred upon a "mint" such authority is conferred upon the person locally in charge of the respective United States mint or assay office acting in accordance with the instructions of the Director of the Mint or the Secretary of the Treasury.

"Mint district" means one of the following areas:

The mint district of Philadelphia, which for the purposes of these regulations consists of the States of Illinois, Indiana, Kentucky, Maryland, Missouri, North Carolina, Ohio, Pennsylvania, South Carolina, Virginia, and West Virginia, and the District of Columbia.

The mint district of New York, which for the purposes of these regulations consists of the States of Connecticut, Delaware, Maine, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Rhode Island, Vermont, and Wisconsin, and Puerto Rico, the Virgin Islands of the United States, and the Panama Canal Zone.

The mint district of Denver, which for the purposes of these regulations consists of the States of Colorado, Iowa, Kansas, Minnesota, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Utah, and Wyoming.

The mint district of San Francisco, which for the purposes of these regulations consists of the States of Arizona, California, and Nevada, and the Territories and possessions of the United States not specifically included in other mint districts.

The mint district of Seattle, which for the purposes of these regulations consists of the States of Idaho, Montana, Oregon, and Washington, and the Territory of Alaska.

The mint district of New Orleans, which for the purposes of these regulations consists of the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Tennessee, and Texas.

"Gold coin" means any coin containing gold as a major element, including gold coin of a foreign country.

"Gold bullion" means any gold which has been put through a process of smelting or refining, and which is in such state or condition that its value depends primarily upon the gold content and not upon its form; but it does not include metals containing less than 5 troy ounces of fine gold per short ton, nor does it include gold coin.

"Fabricated gold" means gold which has, in good faith and not for the purpose of evading, or enabling others to evade, the provisions of the Act or of these regulations, been processed or manufactured for some one or more specific and customary industrial, professional, or artistic uses, but does not include gold coin or scrap gold.

"Scrap gold" means gold sweepings and fabricated gold, the value of which depends primarily upon its gold content [fol. 44] and not upon its form, which is no longer held for the use for which it was processed or manufactured.

Wherever reference is made in these regulations to equivalents as between dollars or currency of the United States and gold, $1 or $1 face amount of any currency of the United States equals such a number of grains of gold, nine-tenths fine, as, at the time referred to, are contained in the standard unit of value, that is, so long as the President shall not have altered by proclamation the weight of the gold dollar under the authority of section 43, title III, of the Act approved May 12, 1933, as heretofore and by the Act amended, twenty-five and eight-tenths grains of gold, nine-tenths fine, and thereafter such a number of grains of gold, nine-tenths fine, as the President shall have fixed under such authority.

Wherever reference is made in these regulations to "articles" or "sections", the reference is, unless otherwise indicated, to the designated articles and sections of these regulations.

Sec. 5. General provisions affecting applications, affidavits, and reports.—Every application, affidavit, and report required to be made hereunder shall be made upon the appropriate form prescribed by the Secretary of the Treas-

ury, and, except insofar as these regulations may otherwise specify, shall be executed under oath before an officer authorized to administer oaths. Duplicate copies properly executed shall be filed with the agencies designated in these regulations for that purpose. Action upon any application or affidavit may be withheld pending the furnishing of any or all of the information required in such forms or of such additional information as may be deemed necessary by the Secretary of the Treasury, or the agency authorized or directed to act hereunder. There shall be attached to the applications, affidavits, or reports such instruments as may be required by the terms thereof and such further instruments as may be required by the Secretary of the Treasury, or by such agency. Whenever additional information is requested it shall be furnished under oath.

Sec. 6. General provisions affecting licenses.—(1) Licenses issued pursuant to these regulations shall be upon the appropriate form prescribed by the Secretary of the Treasury. Licenses shall be non-transferable and shall entitle the licensee to acquire, transport, melt or treat, import, export, or earmark or hold in custody for foreign or domestic account, gold only in such form and to the extent permitted by, and subject to the conditions prescribed in, these regulations and such licenses.

(2) Licenses may be modified or revoked at any time in the discretion of the Secretary of the Treasury acting directly, or through the agency which issued the license, or any other agency designated by the Secretary of the Treasury. In the event that a license is modified or revoked (other than [fol. 45] by a modification or revocation of these regulations), the Secretary of the Treasury, or the agency through which the license was issued, or such other agency designated by the Secretary of the Treasury, shall advise the licensee by letter mailed to the address of the licensee set forth in the application. The licensee, upon receipt of such advice, shall forthwith surrender his license as directed in such advice. If the license has been modified but not revoked, the Secretary of the Treasury, or the agency through which the original license was issued, shall thereupon issue a modified license.

(3) No license issued hereunder shall authorize the licensee to hold any gold coin, or any gold melted by any

person from gold coin, unless the license contains a specific provision to that effect.

(4) No license issued hereunder shall exempt the licensee from the duty of complying with the legal requirements of any State or Territory or local authority.

(5) No license shall be issued to any person doing business under a name which, in the opinion of the Secretary of the Treasury or the designated agency issuing the license, is designed or is likely to induce the belief that gold is purchased, treated, or sold on behalf of the United States or for the purpose of carrying out any policy of the United States.

Sec. 7. General provisions affecting export licenses.—At the time any license to export gold is issued, the Federal Reserve bank or mint issuing the same shall transmit a copy thereof to the collector of customs at the port of export designated in the license. Collectors of customs shall not permit the export or transportation from the continental United States of gold in any form except upon surrender of a license to export, a copy of which has been received by him from the Federal Reserve bank or the mint issuing such license: Provided, however, That the export, or transportation from the continental United States, of fabricated gold may be permitted subject to the provisions of section 16(2): And provided further, That gold held by the Federal Reserve banks under article IV may be exported for the purposes of such article without a license. The collector of customs to whom a license to export is surrendered shall cancel such license and return it to the Federal Reserve bank or mint which issued the same. In the event that the shipment is to be made by mail, a copy of the export license shall be sent to the postmaster of the post office designated in the application, who will act under the instructions of the Postmaster General in regard thereto.

Sec. 8. General provisions affecting import licenses.—No gold in any form imported into the United States shall be permitted to enter until the person importing such gold shall have satisfied the collector of customs at the port of entry that he holds a license authorizing him to import [fol. 46] such gold or that such gold may be imported with-

out a license under the provisions of article II or IV. Postmasters receiving packages containing gold will deliver such gold subject to the instructions of the Postmaster General.

Sec. 9. Forms available.—Any form, the use of which is prescribed in these regulations, may be obtained at, or on written request to, any United States mint or assay office, Federal Reserve bank, and at the Treasury Department, Washington, D. C.

Sec. 10. Representations by licensees.—Licensees may include in public and private representations or statements the clause "licensed on form TGL—(here inserting the number of the form of license held by the licensee) pursuant to the regulations prescribed under the Gold Reserve Act of 1934", but any representation or statement which might induce the belief that the licensee is acting or is especially privileged to act on behalf of or for the United States, or is purchasing, treating, or selling gold for the United States, or in any way dealing in gold for the purpose of carrying out any policy of the United States, shall be a violation of the conditions of the license. Each agency issuing licenses hereunder which receives notice of any such representations or statements made by or with the acquiescence of any licensee shall promptly notify the Secretary of the Treasury in order that he may advise it whether or not the license of the person making such representations or statements, or permitting such representations or statements to be made, should be revoked.

Sec. 11. Penalties.—Any gold withheld, acquired, transported, melted or treated, imported, exported, or earmarked or held in custody in violation of the Act, or of any regulations issued thereunder, including these regulations, or of any licenses issued pursuant thereto or hereto, shall be forfeited to the United States and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law; and, in addition, any person failing to comply with the provisions of the Act or of any such regulations or licenses shall be subject to a penalty equal to twice the value of the gold in respect of which such failure occurred.

Article II. Conditions under Which Gold May Be Acquired and Held, Transported, Melted or Treated, Imported, Exported, or Earmarked or Held in Custody for Foreign or Domestic Account

Sec. 12. Gold in any form may be acquired, transported, melted or treated, imported, exported, or earmarked or held in custody for foreign or domestic account (except on behalf of the United States), only to the extent permitted by, and subject to the conditions prescribed in, these regulations or licenses issued pursuant to these regulations.

[fol. 47] Sec. 13. Transportation of gold.—Gold may be transported by carriers for persons who are licensed to hold and transport such gold or who are permitted by these regulations to hold and transport gold without a license.

Sec. 14. Gold situated outside of the United States.—Gold in any form situated outside of the United States may be acquired, transported, melted or treated, or earmarked or held in custody for foreign or domestic account without the necessity of holding a license.

Sec. 15. Gold situated in the possessions of the United States.—Gold in any form (other than United States gold coin) situated in places subject to the jurisdiction of the United States beyond the limits of the continental United States may be acquired, transported, melted or treated, imported, exported, or earmarked or held in custody for the account of persons other than residents of the continental United States, by persons not domiciled in the continental United States: Provided, however, That gold may be transported from the continental United States to the possessions of the United States only under license for export issued pursuant to sections 25 (3), 32, 33, or 34, or, if fabricated gold, subject to the conditions specified in section 16(2).

Sec. 16. Fabricated gold.—(1) Fabricated gold may be acquired, transported within the United States, imported, or held in custody for domestic account without the necessity of holding a license therefor: Provided, however, That it may be transported from the continental United States to other places subject to the jurisdiction of the United States only subject to the conditions hereinafter specified in paragraph (2) of this section.

(2) Fabricated gold may be exported, or transported from the continental United States, without the necessity of obtaining a license, provided that an affidavit shall have been executed on form TG-10 and filed in duplicate with the collector of customs at the port of shipment from the continental United States or with the postmaster at the place of mailing; and such collector or postmaster shall have endorsed on the duplicate copy of such affidavit that he is satisfied that the shipment from the continental United States is not being made for the purpose of holding or disposing of the fabricated gold outside of the continental United States primarily for the value of the gold content: Provided, further, That persons leaving the continental United States may carry with them fabricated gold owned by them and for their personal use in its frabricated form of a fine gold content not exceeding 15 ounces without the necessity of filing such affidavit or obtaining an export license.

Sec. 17. Metals containing gold.—Metals containing not more than 5 troy ounces of fine gold per short ton may be acquired, transported within the United States, imported, or held in custody for domestic account without the neces- [fol. 48] sity of obtaining a license therefor. Such metals may be melted or treated, exported, and held in custody for foreign account only to the extent permitted by, and subject to the conditions prescribed in, or pursuant to, article III.

Sec. 18. Unmelted scrap gold.—Unmelted scrap gold may be held and transported within the United States in amounts containing not more than 5 troy ounces of fine gold without the necessity of holding a license.

Sec. 19. Gold in its natural state.—Gold in its natural state (i. e., gold recovered from natural sources which has not been melted, smelted, or refined or otherwise treated by heating or by a chemical or electrical process) may be acquired, transported within the United States, imported, or held in custody for domestic account without the necessity of holding a license therefor. Such native gold may be melted or treated or exported only to the extent permitted by, and subject to the conditions prescribed in, or pursuant to, article III.[1]

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[1] See supplement, p. 27, for amendment to this section.

Sec. 20. Rare coin.—Gold coin of recognized special value to collectors of rare and unusual coin (but not including quarter eagles, otherwise known as $2.50 pieces, unless held, together with rare and unusual coin and as part of a collection for historical, scientific, or numismatic purposes, containing not more than four quarter eagles of the same date and design, and struck by the same mint) may be acquired and held, transported within the United States, imported, or held in custody for domestic account without the necessity of holding a license therefor. Such coin may be exported only under license on form TGL-11 issued by the Director of the Mint. Application for such a license shall be executed on form TG-11 and filed with the Director of the Mint, Washington, D. C.

Article III. Gold for Industrial, Professional, and Artistic Use

Section 21. "Twenty-five-ounce exemption."—Any person requiring gold for use in the industry, profession, or art in which he is regularly engaged may replenish his stocks of gold (in addition to fabricated gold) up to the amount actually required for a period not exceeding 3 months (but in no event in an aggregate amount exceeding 25 ounces of fine gold held at any one time) by acquisitions of gold bullion held under licenses issued pursuant to section 23, without the necessity of obtaining a license for such acquisitions; and the gold so acquired may be held, transported, melted or treated, for use by such person in his industry, profession, or art but for no other purpose. Gold may not be acquired and held under this section by persons engaged primarily or incidentally in the business of buying and selling gold other than fabricated gold.

Sec. 22. Licenses required.—Except as permitted in article II and in section 21 of this article, gold may be acquired [fol. 49] and held, transported, melted or treated, imported, exported, or earmarked for industrial, professional, or artistic use only to the extent permitted by licenses issued under section 23 hereof.

Sec. 23. Purposes for which licenses shall be issued.—The mints shall issue licenses authorizing the acquisition and holding, transportation, melting and treating, importing, exporting, and holding for domestic account of gold

which the mint is satisfied is required for legitimate and customary use in industry, profession, or art, by an applicant regularly engaged in the mint district of such mint (1) in the business of furnishing or processing gold for industry, profession, or art, or for sale to the United States, (2) in an industry, profession, or art in which stocks of gold in excess of 25 fine ounces are required to be maintained by the applicant.

Sec. 24. Applications.—Every application for a license under section 23 shall be made on form TG-12 (except that applications for export shall be made on form TG-15) and shall be filed in duplicate with the United States mint for the mint district in which is located the applicant's principal place of business. No person shall make application to more than one mint; and, in the event any one person is, through misrepresentation or mistake, issued a license under this article by more than one mint, all licenses issued to such person shall be void from the date of issuance to such person of a license by a second mint. Every applicant for a license under section 23 shall state in his application whether or not any applications have been filed by or licenses issued to any partnership, association, or corporation in which the applicant has a substantial interest or if the applicant is a partnership, association, or corporation, by or to a person having a substantial interest in such partnership, association, or corporation. No mint shall issue any license to any person if in its judgment more than one license for the same purpose will be held for the principal use or benefit of the same persons or interests. Any person licensed under this article acquiring a principal interest in any partnership, association, or corporation holding a license under this article for this purpose shall immediately so inform the mints which issued the licenses.

Sec. 25. Licenses.—(1) Upon receipt of the application and after making such investigation of the case as it may deem advisable, the mint, if satisfied that gold is necessary for the legitimate and customary requirements of the applicant's industry, profession, art, or business, shall issue to the applicant a license on form TGL-12, TGL-13, or TGL-14, whichever is designated in rulings of the Secretary of the Treasury for the kind of business, industry, profession, or art in which the applicant is engaged.

[fol. 50] (2) Licenses issued under this article may entitle the licensee to acquire and hold not to exceed a maximum amount specified therein, which amount shall not be greater than the estimated requirements of the licensee for a period of 3 months; and such license may authorize the licensee to transport such gold from place to place within the United States, melt or treat it to the extent necessary to meet the requirements of the industry, profession, or art for which it was acquired and held or otherwise to carry out the purposes for which it is held under license, and may authorize the licensee to import gold so long as the maximum amount of gold held after importation does not exceed the maximum amount authorized by the license to be held.

(3) No license on form TGL-12, TGL-13, or TGL-14, shall authorize the licensee to export or transport from the continental United States, without a supplementary license on form TGL-15 issued by the mint which issued the license on form TGL-12, TGL-13, or TGL-14, gold in any form (except that fabricated gold maybe exported or transported from the continental United States subject to the conditions specified in section 16 (2)). Export licenses on form TGL-15 shall be issued only with the approval of the Secretary of the Treasury, and upon application made on form TG-15 showing to the satisfaction of the mint and the Secretary of the Treasury that the export or transport from the continental United States is for a specific and customary industrial, professional, or artistic use connected with the applicant's business, and not for the purpose of using or holding or disposing of such gold beyond the limits of the continental United States as, or in lieu of, money, or for the value of its gold content.

(4) No license issued under this article shall entitle the licensee to acquire and hold, transport, melt or treat, import or export, or hold in custody any gold coin.

Sec. 26. Records.—Every person holding a license issued pursuant to section 23 shall keep exact records of all his acquisitions and deliveries of gold. His records shall contain the name, address, and license number of each person from whom he acquires, or to whom he delivers, gold (other than fabricated gold) and shall show the amount, date, and description of each such acquisition and delivery, and such

records shall be available for examination by a representative of the Treasury Department for at least 1 year after the date of the disposition of such gold.

Sec. 27. Reports.—Every person holding a license on form TGL-12, TGL-13, or TGL-14 shall file with the mint [1] which issued his license, on or before the 15th day of February, May, August, and November, a report on form TGR-12, TGR-13, or TGR-14, respectively, for the quarter ending on the first day of such months.

[fol. 51] Article IV. Gold for the Purpose of Settling International Balances, and for Other Purposes

Sec. 28. The Federal Reserve banks may from time to time acquire from the United States by redemption of gold certificates in accordance with section 6 of the Act, such amounts of gold bullion as, in the judgment of the Secretary of the Treasury, are necessary to settle international balances or to maintain the equal purchasing power of every kind of currency of the United States. Such banks may also acquire gold abroad or may acquire gold in the United States which has not been held in noncompliance with the Executive orders, or the orders of the Secretary of the Treasury, issued under sections 2 and 3 of the Act of March 9, 1933, entitled "An act to provide relief in the existing national emergeney in banking and for other purposes", or in noncompliance with any regulations or rulings made thereunder or licenses issued pursuant thereto, or acquired and held, transported, melted or treated, imported, exported, earmarked or held in custody for foreign or domestic account in violation of the Act or regulations issued thereunder, including these regulations.

Sec. 29. The gold acquired under section 28 may be held, transported, imported, exported, or earmarked or held in custody for foreign or domestic account for the purposes of settling international balances or maintaining the equal purchasing power of every kind of currency of the United States: Provided, That if the gold is not used for such purposes within 6 months from the date of acquisition, it

[1] Instructions have since been issued instructing licensees to file such reports with the Director of the Mint, Washington, D. C.

shall (unless the Secretary of the Treasury shall have extended the period within which such gold may be so held) be paid and delivered to the Treasurer of the United States against payment therefor by credits in equivalent amounts in dollars in the accounts authorized under the sixteenth paragraph of section 16 of the Federal Reserve Act, as amended.

Sec. 30. The provisions of this article shall not be construed to permit any person subject to the jurisdiction of the United States, other than a Federal Reserve bank, to acquire gold for the purposes specified in this article, or to permit any person to acquire gold from a Federal Reserve bank except to the extent that his license issued hereunder specifically so provides.

Article V. Gold for Other Purposes Not Inconsistent with the Purposes of the Gold Reserve Act of 1934

Sec. 31. Licenses required.—Gold may be acquired and held, transported, melted or treated, imported, exported, or earmarked or held in custody for foreign or domestic account, for purposes other than those specified in articles III [fol. 52] and IV not inconsistent with the purposes of the Act only to the extent permitted in article II or under a license issued under section 32, 33, or 34.

Sec. 32. Gold imported in gold-bearing materials for reexport.—The United States assay office at New York or the United States mint at San Francisco shall issue licenses on form TGL-16, authorizing the export of gold which such assay office or mint is satisfied was refined (or is equivalent to gold refined) from gold-bearing materials imported into the United States, provided such gold is imported, acquired, and held, transported, melted and treated as permitted in article II or in accordance with a license issued under section 23 hereof and subject to the following provisions:

(1) Notation upon entry.—Upon the formal entry into the United States of any gold-bearing materials, the importer shall declare to the collector of customs at the port where the material is formally entered that the importation is made with the intention of exporting the gold refined therefrom. The collector shall make on the entry a notation to this effect and forward a copy of the entry to the United

States assay office at New York or to the United States mint at San Francisco, whichever is designated by the importer.

(2) Sampling and assaying.—Promptly upon the receipt of each importation of gold-bearing material at the plant where it is first to be treated, it shall be weighed, sampled, and assayed for the gold content. A reserve commercial sample shall be retained by such plant for at least 1 year from the date of importation, unless the assay is sooner verified by the Treasury Department.

(3) Plant records.—The importer shall cause an exact record, covering each importation, to be kept at the plant of first treatment. The records shall show the gross wet weight of the importation, the weight of containers, if any, the net wet weight, the percentage and weight of moisture, the net dry weight, and the gold content shown by the settlement assay. An attested copy of such record shall be filed promptly with the assay office at New York or the mint at San Francisco, whichever has been designated to receive a copy of the entry. The plant records herein required to be kept shall be available for examination by a representative of the Treasury Department for at least 1 year after the date of the disposition of such gold.

(4) Application for export license.—Not later than 3 months from the date of entry the importer shall file with the New York assay office or the mint at San Francisco, whichever has been designated to receive a copy of the entry, an application on form TG-16 for a permit to export refined gold not in excess of the amount shown by the settlement sheet covering the importation. The application shall be accompanied by two duly attested copies of the settlement sheet.

[fol. 53] (5) Issuance of serial numbered certificates.—If the mint is satisfied as to the accuracy of the data shown on such application, it shall issue to the importer a dated serial numbered certificate, which shall show the amount of gold specified by the application and the amount specified by the settlement sheet. The Director of the Mint shall prescribe the form of such certificate.

(6) Issuance of export license.—Upon delivery of the serial numbered certificate to the assay office at New York or to the mint at San Francisco, whichever has issued the

certificate, within 120 days from the date the certificate was issued, the mint shall issue to the applicant an export license on form TGL-16 to export refined gold in an amount not exceeding the amount specified in the settlement sheet as shown on such certificate.

(7) Exportation prior to receipt of settlement sheet.—Upon a showing in the application that an exportation with respect to any gold-bearing materials imported into the United States for refining is necessary prior to the time the settlement sheet can be procured, the assay office at New York or the mint at San Francisco, whichever was designated by the importer, may receive the application with duplicate certified copies of the report of the applicant's actual test assay. If prior reports of such applicant have been approximately substantiated by the settlement sheets, a license to export up to 90 percent of the amount of gold which such report estimates will be realized from such gold-bearing materials may be granted.

Sec. 33. Gold imported for reexport.—Gold may be imported, transported, and exported without the necessity of holding a license, provided the gold remains under customs custody throughout the period during which it is within the customs limits of the United States. Except as provided in the foregoing sentence, gold may be imported for reexport, held, and transported within the United States under the provisions of this section only under license. The United States assay office at New York or the United States mint at San Francisco may, subject to the following provisions, issue licenses on form TGL-17 authorizing the importation, holding, transportation, and exportation of gold which the office or mint is satisfied is imported for prompt reexport.

(1) Notation upon entry.—Upon the formal entry into the United States of gold intended for prompt reexport, the importer shall declare to the collector of customs at the port where the gold is formally entered that it is entered for prompt reexport. The collector shall make a notation of this declaration upon the entry and forward a copy of the entry to the assay office at New York or the mint at San Francisco, whichever is designated by the importer.

[fol. 54] (2) Application for license.—The importer shall forthwith file an application on form TG-17 with the assay

office at New York or the mint at San Francisco, whichever has been designated to receive a copy of the entry.

(3) License.—Upon receipt of the application and after making such investigation of the case as it may deem advisable, the assay office or mint to which the application is made, if satisfied that the gold was imported for prompt reexport, shall issue to the applicant a license on form TGL–17.

Sec. 34. The Secretary of the Treasury, with the approval of the President, shall issue licenses authorizing the acquisition, transportation, melting or treating, importing, exporting, or earmarking or holding in custody for foreign or domestic account of gold, for purposes other than those specified in articles III and IV, and sections 32 and 33 of this article, which, in the judgment of the Secretary of the Treasury, are not inconsistent with the purposes of the Act, subject to the following provisions:

(1) Applications.—Every application for a license under this section shall be made on form TG-18 and shall be filed in duplicate with the Federal Reserve bank for the district in which the applicant resides or has his principal place of business. Upon receipt of the application and after making such investigation of the case as it may deem advisable, the Federal Reserve bank shall transmit to the Secretary of the Treasury the original of the application, together with any supplemental information it may deem appropriate. The Federal Reserve bank shall retain the duplicate of the application for its records.

(2) Licenses.—If the issuance of a license is approved, the Federal Reserve bank which received and transmitted the application will be advised by the Secretary of the Treasury and directed to issue a license on form TGL–18. If a license is denied, the Federal Reserve bank will be so advised and shall immediately notify the applicant. The decision of the Secretary of the Treasury with respect to the granting or denying of a license shall be final. If a license is granted, the Federal Reserve bank shall thereupon note upon the duplicate of the application therefor, the date of approval and issuance and the amount of gold specified in such license.

(3) Reports.—Within 7 days of the disposition of the gold acquired or held under a license issued under this

section, or within 7 days of export, if such exportation is authorized, the licensee shall file a report in duplicate on form TGR–18 with the Federal Reserve bank through which the license was issued. Upon receipt of such report, the Federal Reserve bank shall transmit the original thereof to the Secretary of the Treasury and retain the duplicate for its records.

[fol. 55]

Treasury Department,
Office of the Secretary,
August 26, 1935.

Amendment to Provisional Regulations

Issued under the Gold Reserve Act of 1934

The Provisional Regulations issued under the Gold Reserve Act of 1934, as amended, are hereby further amended, effective from the time of approval by the President of this amendment, in the following respects:

Section 28 is amended to read as follows:

"Sec. 28. The Federal Reserve banks may from time to time acquire from the United States by redemption of gold certificates in accordance with section 6 of the Act, such amounts of gold bullion as, in the judgment of the Secretary of the Treasury, are necessary to settle international balances or to maintain the equal purchasing power of every kind of currency of the United States. Such banks may also acquire gold *(other than United States gold coin)* abroad or may acquire gold *(other than United States gold coin)* in the United States which has not been held in noncompliance with the Executive orders, or the orders of the Secretary of the Treasury, issued under sections 2 and 3 of the Act of March 9, 1933, entitled 'An act to provide relief in the existing national emergency in banking and for other purposes', or in noncompliance with any regulations or rulings made thereunder or licenses issued pursuant thereto, or acquired and held, transported, melted or treated, imported, exported, earmarked or held in custody for foreign or domestic account in violation of the Act or regulations issued thereunder, including these regulations."

Section 35 is amended to read as follows:

"Sec. 35. The mints, subject to the conditions specified in these regulations, and the general regulations governing the mints, are authorized to purchase:

[fol. 56] (a) Gold recovered from natural deposits in the United States or any place subject to the jurisdiction thereof, and which shall not have entered into monetary or industrial use;

(b) Unmelted scrap gold;

(c) Gold *(other than United States gold coin)* imported into the United States after January 30, 1934; and

(d) Such other gold *(other than United States gold coin)* as may be authorized from time to time by rulings of the Secretary of the Treasury.

Provided, however, That no gold shall be purchased by any mint or assay office under the provisions of this article which, in the opinion of the mint, has been held at any time in noncompliance with the Act of March 9, 1933, any Executive orders or orders of the Secretary of the Treasury issued thereunder, or in noncompliance with any regulations prescribed under such orders or licenses issued pursuant thereto or which, in the opinion of the mint, has been acquired and held, transported, melted or treated or held in custody in violation of the Act or of regulations issued thereunder, including these regulations."

H. Morgenthau, Jr., Secretary of the Treasury.

Approved: Franklin D. Roosevelt, The White House, August 26, 1935, 8 P. M. Eastern Standard Time.

[fol. 57] Article VI. Purchase of Gold by Mints

Sec. 35. The mints, subject to the conditions specified in these regulations, and the general regulations governing the mints, are authorized to purchase:

(a) Gold recovered from natural deposits in the United States or any place subject to the jurisdiction thereof, and which shall not have entered into monetary or industrial use;

(b) Unmelted scrap gold;

(c) Gold imported into the United States after January 30, 1934; and

(d) Such other gold as may be authorized from time to time by rulings[1] of the Secretary of the Treasury; Provided, however, That no gold shall be purchased by any mint or assay office under the provisions of this article which, in the opinion of the mint, has been held at any time in noncompliance with the act of March 9, 1933, any Executive orders or orders of the Secretary of the Treasury issued thereunder, or in noncompliance with any regulations prescribed under such orders or licenses issued pursuant thereto or which, in the opinion of the mint, has been acquired and held, transported, melted or treated or held in custody in violation of the Act or of regulations issued thereunder, including these regulations.

Sec. 36. Deposits.—Gold in the form of unmelted scrap gold, coins, bars, kings, and buttons will be received in amounts of not less than one troy ounce of fine gold. Gold in the form of retort sponge, lumps, nuggets, grains, and dust, in their native state free from earth and stone, or nearly so, will be received in amounts of not less than two troy ounces of fine gold. Deposits of gold shall not contain less than 200 parts of gold in 1,000 by assay. In the case of gold forwarded to a mint by mail or express, a letter of transmittal shall be sent with each package. When there is a material discrepancy between the actual and invoice weights of a deposit, further action in regard to it will be deferred pending communication with the depositor.

Sec. 37. Rejection of gold by mint.—Deposits of gold which do not conform to the requirements of sections 35 or 36, or which otherwise are unsuitable for mint treatment shall be rejected and returned to the person delivering the same at his risk and expense. Any deposit of gold which has been held at any time in noncompliance with the act of March 9, 1933, any Executive orders or orders of the Secretary of the Treasury issued thereunder, or in noncompliance with any regulations prescribed under such orders or licenses issued pursuant thereto, or in noncompliance with the Act and any regulations issued thereunder, including

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[1] See supplement, pp. 28, 29, 30, 31, for General Rulings issued under this section.

these regulations, or any licenses issued pursuant thereto [fol. 58] or hereto may be held subject to the penalties provided in section 12 hereof, or sections 2 or 3 of said act of March 9, 1933.

Sec. 38. Gold recovered from natural deposits in the United States or any place subject to the jurisdiction thereof.—(1) The mints shall not purchase any gold under clause (a) of section 35 unless the deposit of such gold is accompanied by a properly executed affidavit as follows:

An affidavit on form TG-19 shall be filed with each delivery of gold by persons who have recovered such gold by mining or panning in the United States or any place subject to the jurisdiction thereof: Provided, however, That such persons delivering gold in the form of nuggets or dust having an aggregate weight of not more than 5 ounces, which they have recovered from mining or panning in the United States or any place subject to the jurisdiction thereof, may accompany such delivery with full and complete information on form TG-19 without the requirement of an oath.

An affidavit on form TG-20 shall be filed with each delivery of gold by persons who have recovered such gold from gold-bearing materials in the regular course of their business of operating a custom mill, smelter, or refinery.

An affidavit on form TG-21 together with a statement also under oath giving (a) the names of the persons from whom gold was purchased; (b) amount and description of each lot of gold purchased; (c) the location of the mine or placer deposit from which each lot was taken; and (d) the period within which such gold was taken from the mine or placer deposit, shall be filed with each such delivery of gold by persons who have purchased such gold directly from the persons who have mined or panned such gold.

In addition such persons shall show that the gold was acquired, held, melted and treated, and transported by them in accordance with a license issued pursuant to section 23 hereof, or that such acquisition, holding, melting and treating, and transportation is permitted under article II without necessity of holding a license.

Sec. 39. Unmelted scrap gold.—No deposit of unmelted scrap gold shall be accepted unless accompanied by a

properly executed affidavit on form TG-22. In addition the depositors of such gold shall establish to the satisfaction of the mint that the gold was acquired, held, and transported by them in accordance with a license issued pursuant to these regulations.

Sec. 40. Imported gold.—The mints are authorized to purchase only such gold imported into the United States as has been in customs custody throughout the period in which it shall have been situated within the customs limits of the continental United States, and then only subject to the following provisions:

(1) Notation upon entry.—Upon formal entry into the United States of any gold intended for sale to a mint under [fol. 59] this article, the importer shall declare to the collector of customs at the port of entry where the gold is formally entered that the gold is entered for such sale. The collector shall make a notation of this declaration upon the entry and forward a copy to the mint designated by the importer.

(2) Upon the deposit of the gold with the mint designated by the importer, the importer shall file an affidavit executed in duplicate on form TG-23.

Sec. 41. Records and reports.—Every person delivering gold in accordance with this article, who is required to be licensed to hold gold, shall keep an exact record of all gold mined, acquired, and all deliveries of gold made by such person as provided in section 26 hereof and shall file with the mint which issued the license the reports required under section 27 hereof. The mints shall not purchase gold under the provisions of this article from any person who has failed to comply with these regulations or the terms of his license.

Sec. 42. Purchase price.—The mints shall pay for all gold purchased by them in accordance with this article $35.00 (less one fourth of 1 percent) per troy ounce of fine gold, but shall retain from such purchase price an amount equal to all mint charges. This price may be changed by the Secretary of the Treasury without notice other than by notice of such change mailed or telegraphed to the mints.

Article VII. Sale of Gold by Mints

Sec. 43. Each mint is authorized to sell gold to persons licensed by it to acquire such gold for use in industry, profession, or art: Provided, however, That no mint may sell gold to any person in an amount which, in the opinion of such mint, exceeds the amount actually required by such licensee for a period of 3 months. Prior to the sale of any gold under this article, the mint shall require the purchaser to execute and file in duplicate an affidavit on form TG–24, or, if such purchaser is in the business of furnishing gold for use in industries, professions, and arts, on form TG–25. The mints are authorized to refuse to sell gold in amounts less than 25 ounces, and shall not sell gold under the provisions of this article to any person who has failed to comply with these regulations or the terms of his license.

Sec. 44. Sale price.—The mints shall charge for all gold sold under this article $35.00 (plus one fourth of 1 percent) per troy ounce of fine gold. This price may be changed by the Secretary of the Treasury without notice other than by notice of such change mailed or telegraphed to the mints.

[fol. 60] Article VIII. Transitory Provisions[1]

Sec. 45. Licenses issued by the United States mints and assay offices on Form TGL-4 and TGL-4A, shall until March 15, 1934, be deemed licenses under section 23 hereof. Such licenses on Form TGL-4 will authorize the licensee until March 15, 1934, to acquire—

(1) gold held under License TGL-4 or TGL-4A or under License TGL-12, TGL-13, or TGL-14 issued pursuant to these regulations;

(2) unmelted scrap gold from persons who acquired and hold such gold lawfully; or

(3) gold bullion from the mint which issued his licenses; and to hold, transport, melt and treat, gold now lawfully held or so acquired in amounts authorized by the license. Such licenses on Form TGL-4A will authorize the licensee until March 15, 1934, to acquire unmelted scrap gold—

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[1] See supplement, p. 27, for amendments to this article.

(1) held under License TGL-4A or under License TGL-12, issued pursuant to these regulations; or

(2) from persons who acquired and hold unmelted scrap gold lawfully;

and to hold and transport unmelted scrap gold now lawfully held or so acquired in amounts authorized by the license.

Sec. 46. Licenses to hold gold in custody, issued by direction of the Secretary of the Treasury on forms TGL-1 and TGL-2 up to and including March 15, 1934, shall be deemed licenses to hold such gold in custody subject to the conditions prescribed therein, unless sooner terminated by the terms thereof.

Henry Morgenthau, Jr., Secretary of the Treasury.

Approved: Franklin D. Roosevelt, The White House.

Articles I, II, III, IV, V, and VIII approved January 30, 1934.

Articles VI and VII approved January 31, 1934.

[fol. 61] Gold Reserve Act of 1934

An Act To protect the currency system of the United States, to provide for the better use of the monetary gold stock of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the short title of this Act shall be the "Gold Reserve Act of 1934."

Sec. 2. (a) Upon the approval of this Act all right, title, and interest, and every claim of the Federal Reserve Board, of every Federal Reserve bank, and of every Federal Reserve agent, in and to any and all gold coin and gold bullion shall pass to and are hereby vested in the United States; and in payment therefor credits in equivalent amounts in dollars are hereby established in the Treasury in the accounts authorized under the sixteenth paragraph of section 16 of the Federal Reserve Act, as heretofore and by this Act amended (U. S. C., title 12, sec. 467). Balances in such accounts shall be payable in gold certificates, which shall be in such form and in such denominations as

the Secretary of the Treasury may determine. All gold so transferred, not in the possession of the United States, shall be held in custody for the United States and delivered upon the order of the Secretary of the Treasury; and the Federal Reserve Board, the Federal Reserve banks, and the Federal Reserve agents shall give such instructions and shall take such action as may be necessary to assure that such gold shall be so held and delivered.

(b) Section 16 of the Federal Reserve Act, as amended, is further amended in the following respects:

(1) The third sentence of the first paragraph is amended to read as follows: "They shall be redeemed in lawful money on demand at the Treasury Department of the United States, in the city of Washington, District of Columbia, or at any Federal Reserve bank."

(2) So much of the third sentence of the second paragraph as precedes the proviso is amended to read as follows: "The collateral security thus offered shall be notes, drafts, bills of exchange, or acceptances acquired under the provisions of section 13 of this Act, or bills of exchange endorsed by a member bank of any Federal Reserve district and purchased under the provisions of section 14 of this Act, or bankers' acceptances purchased under the provisions of said section 14, or gold certificates:".

(3) The first sentence of the third paragraph is amended to read as follows: "Every Federal Reserve bank shall maintain reserves in gold certificates or lawful money of not less than 35 per centum against its deposits, and reserves in gold certificates of not less than 40 per centum against its Federal Reserve notes in actual circulation: Provided, however, That when the Federal Reserve agent holds gold certificates as collateral for Federal Reserve notes issued to the bank such gold certificates shall be counted as part of the reserve which such bank is required to maintain against its Federal Reserve notes in actual circulation."

[fol. 62] (4) The fifth and sixth sentences of the third paragraph are amended to read as follows: "Notes presented for redemption at the Treasury of the United States shall be paid out of the redemption fund and returned to the Federal Reserve banks through which they were orig-

inally issued, and thereupon such Federal Reserve bank shall, upon demand of the Secretary of the Treasury, reimburse such redemption fund in lawful money or, if such Federal Reserve notes have been redeemed by the Treasurer in gold certificates, then such funds shall be reimbursed to the extent deemed necessary by the Secretary of the Treasury in gold certificates, and such Federal Reserve bank shall, so long as any of its Federal Reserve notes remain outstanding, maintain with the Treasurer in gold certificates an amount sufficient in the judgment of the Secretary to provide for all redemptions to be made by the Treasurer. Federal Reserve notes received by the Treasurer otherwise than for redemption may be exchanged for gold certificates out of the redemption fund hereinafter provided and returned to the Reserve bank through which they were originally issued, or they may be returned to such bank for the credit of the United States."

(5) The fourth, fifth, and sixth paragraphs are amended to read as follows:

"The Federal Reserve Board shall require each Federal Reserve bank to maintain on deposit in the Treasury of the United States a sum in gold certificates sufficient in the judgment of the Secretary of the Treasury for the redemption of the Federal Reserve notes issued to such bank, but in no event less than 5 per centum of the total amount of notes issued less the amount of gold certificates held by the Federal Reserve agent as collateral security; but such deposit of gold certificates shall be counted and included as part of the 40 per centum reserve hereinbefore required. The Board shall have the right, acting through the Federal Reserve agent, to grant in whole or in part, or to reject entirely the application of any Federal Reserve bank for Federal Reserve notes; but to the extent that such application may be granted the Federal Reserve Board shall, through its local Federal Reserve agent, supply Federal Reserve notes to the banks so applying, and such bank shall be charged with the amount of the notes issued to it and shall pay such rate of interest as may be established by the Federal Reserve Board on only that amount of such notes which equals the total amount of its outstanding Federal Reserve notes less the amount of gold certificates held by the Federal Reserve agent as collateral security. Federal

Reserve notes issued to any such bank shall, upon delivery, together with such notes of such Federal Reserve bank as may be issued under section 18 of this Act upon security of United States 2 per centum Government bonds, become a first and paramount lien on all the assets of such bank.

"Any Federal Reserve bank may at any time reduce its liability for outstanding Federal Reserve notes by depositing with the Federal Reserve agent its Federal Reserve notes, gold certificates, or lawful money of the United States. Federal Reserve notes so deposited shall not be reissued, except upon compliance with the conditions of an original issue.

"The Federal Reserve agent shall hold such gold certificates or lawful money available exclusively for exchange [for. 63] for the outstanding Federal Reserve notes when offered by the Reserve bank of which he is a director. Upon the request of the Secretary of the Treasury the Federal Reserve Board shall require the Federal Reserve agent to transmit to the Treasurer of the United States so much of the gold certificates held by him as collateral security for Federal Reserve notes as may be required for the exclusive purpose of the redemption of such Federal Reserve notes, but such gold certificates when deposited with the Treasurer shall be counted and considered as if collateral security on deposit with the Federal Reserve agent."

(6) The eighth paragraph is amended to read as follows:

"All Federal Reserve notes and all gold certificates and lawful money issued to or deposited with any Federal Reserve agent under the provisions of the Federal Reserve Act shall hereafter be held for such agent, under such rules and regulations as the Federal Reserve Board may prescribe, in the joint custody of himself and the Federal Reserve bank to which he is accredited. Such agent and such Federal Reserve bank shall be jointly liable for the safekeeping of such Federal Reserve notes, gold certificates, and lawful money. Nothing herein contained, however, shall be construed to prohibit a Federal Reserve agent from depositing gold certificates with the Federal Reserve Board, to be held by such Board subject to his order, or with the Treasurer of the United States for the purposes authorized by law."

(7) The sixteenth paragraph is amended to read as follows:

"The Secretary of the Treasury is hereby authorized and directed to receive deposits of gold or of gold certificates with the Treasurer or any Assistant Treasurer of the United States when tendered by any Federal Reserve bank or Federal Reserve agent for credit to its or his account with the Federal Reserve Board. The Secretary shall prescribe by regulation the form of receipt to be issued by the Treasurer or Assistant Treasurer to the Federal Reserve bank or Federal Reserve agent making the deposit, and a duplicate of such receipt shall be delivered to the Federal Reserve Board by the Treasurer at Washington upon proper advices from any Assistant Treasurer that such deposit has been made. Deposits so made shall be held subject to the orders of the Federal Reserve Board and shall be payable in gold certificates on the order of the Federal Reserve Board to any Federal Reserve bank or Federal Reserve agent at the Treasury or at the Subtreasury of the United States nearest the place of business of such Federal Reserve bank or such Federal Reserve agent. The order used by the Federal Reserve Board in making such payments shall be signed by the governor or vice governor, or such other officers or members as the Board may by regulation prescribe. The form of such order shall be approved by the Secretary of the Treasury."

(8) The eighteenth paragraph is amended to read as follows:

"Deposits made under this section standing to the credit of any Federal Reserve bank with the Federal Reserve Board shall, at the option of said bank, be counted as part of the lawful reserve which it is required to maintain against outstanding Federal Reserve notes, or as a part of the reserve it is required to maintain against deposits."

Sec. 3. The Secretary of the Treasury shall, by regulations issued hereunder, with the approval of the President, prescribe the conditions under which gold may be acquired [fol. 64] and held, transported, melted or treated, imported, exported, or earmarked: (a) for industrial, professional, and artistic use; (b) by the Federal Reserve banks for the

purpose of settling international balances; and, (c) for such other purposes as in his judgment are not inconsistent with the purposes of this Act. Gold in any form may be acquired, transported, melted or treated, imported, exported, or earmarked, or held in custody for foreign or domestic account (except on behalf of the United States) only to the extent permitted by, and subject to the conditions prescribed in, or pursuant to, such regulations. Such regulations may exempt from the provisions of this section, in whole or in part, gold situated in the Philippine Islands or other places beyond the limits of the continental United States.

Sec. 4. Any gold withheld, acquired, transported, melted or treated, imported, exported, or earmarked or held in custody, in violation of this Act or of any regulations issued hereunder, or licenses issued pursuant thereto, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law; and in addition any person failing to comply with the provisions of this Act or of any such regulations or licenses, shall be subject to a penalty equal to twice the value of the gold in respect of which such failure occurred.

Sec. 5. No gold shall hereafter be coined, and no gold coin shall hereafter be paid out or delivered by the United States: Provided, however, That coinage may continue to be executed by the mints of the United States for foreign countries in accordance with the Act of January 29, 1874 (U. S. C., title 31, sec. 367). All gold coin of the United States shall be withdrawn from circulation, and, together with all other gold owned by the United States, shall be formed into bars of such weights and degrees of fineness as the Secretary of the Treasury may direct.

Sec. 6. Except to the extent permitted in regulations which may be issued hereunder by the Secretary of the Treasury with the approval of the President, no currency of the United States shall be redeemed in gold: Provided, however, That gold certificates owned by the Federal Reserve banks shall be redeemed at such times and in such amounts as, in the judgment of the Secretary of the Treasury, are necessary to maintain the equal purchasing power

of every kind of currency of the United States: And provided further, That the reserve for United States notes and for Treasury notes of 1890, and the security for gold certificates (including the gold certificates held in the Treasury for credits payable therein) shall be maintained in gold bullion equal to the dollar amounts required by law, and the reserve for Federal Reserve notes shall be maintained in gold certificates, or in credits payable in gold certificates maintained with the Treasurer of the United States under section 16 of the Federal Reserve Act, as heretofore and by this Act amended.

No redemptions in gold shall be made except in gold bullion bearing the stamp of a United States mint or assay office in an amount equivalent at the time of redemption to the currency surrendered for such purpose.

Sec. 7. In the event that the weight of the gold dollar shall at any time be reduced, the resulting increase in value [fol. 65] of the gold held by the United States (including the gold held as security for gold certificates and as a reserve for any United States notes and for Treasury notes of 1890) shall be covered into the Treasury as a miscellaneous receipt; and, in the event that the weight of the gold dollar shall at any time be increased, the resulting decrease in value of the gold held as a reserve for any United States notes and for Treasury notes of 1890, and as security for gold certificates shall be compensated by transfers of gold bullion from the general fund, and there is hereby appropriated an amount sufficient to provide for such transfers and to cover the decrease in value of the gold in the general fund.

Sec. 8. Section 3700 of the Revised Statutes (U. S. C., title 31, sec. 734) is amended to read as follows:

"Sec. 3700. With the approval of the President, the Secretary of the Treasury may purchase gold in any amounts, at home or abroad, with any direct obligations, coin, or currency of the United States, authorized by law, or with any funds in the Treasury not otherwise appropriated, at such rates and upon such terms and conditions as he may deem most advantageous to the public interest; any provision of law relating to the maintenance of parity, or limiting the purposes for which any of such obligations, coin, or currency, may be issued, or requiring any such obligations to

be offered as a popular loan or on a competitive basis, or to be offered or issued at not less than par, to the contrary notwithstanding. All gold so purchased shall be included as an asset of the general fund of the Treasury."

Sec. 9. Section 3699 of the Revised Statutes (U. S. C., title 31, sec. 733) is amended to read as follows:

"Sec. 3699. The Secretary of the Treasury may anticipate the payment of interest on the public debt, by a period not exceeding one year, from time to time, either with or without a rebate of interest upon the coupons, as to him may seem expedient; and he may sell gold in any amounts, at home or abroad, in such manner and at such rates and upon such terms and conditions as he may deem most advantageous to the public interest, and the proceeds of any gold so sold shall be covered into the general fund of the Treasury: Provided, however, That the Secretary of the Treasury may sell the gold which is required to be maintained as a reserve or as security for currency issued by the United States, only to the extent necessary to maintain such currency at a parity with the gold dollar."

Sec. 10. (a) For the purpose of stabilizing the exchange value of the dollar, the Secretary of the Treasury, with the approval of the President, directly or through such agencies as he may designate, is authorized, for the account of the fund established in this section, to deal in gold and foreign exchange and such other instruments of credit and securities as he may deem necessary to carry out the purpose of this section. An annual audit of such funds shall be made and a report thereof submitted to the President.

(b) To enable the Secretary of the Treasury to carry out the provisions of this section there is hereby appropriated, out of the receipts which are directed to be covered into the Treasury under section 7 hereof, the sum of $2,000,000,000, which sum when available shall be deposited with the Treasurer of the United States in a stabilization fund (hereinafter called the "fund") under the exclusive control of the Secretary of the Treasury, with the approval of the [fol. 66] President, whose decisions shall be final and not be subject to review by any other officer of the United States. The fund shall be available for expenditure, under the direction of the Secretary of the Treasury and in his

discretion, for any purpose in connection with carrying out the provisions of this section, including the investment and reinvestment in direct obligations of the United States of any portions of the fund which the Secretary of the Treasury, with the approval of the President, may from time to time determine are not currently required for stabilizing the exchange value of the dollar. The proceeds of all sales and investments and all earnings and interest accruing under the operations of this section shall be paid into the fund and shall be available for the purposes of the fund.

(c) All the powers conferred by this section shall expire two years after the date of enactment of this Act, unless the President shall sooner declare the existing emergency ended and the operation of the stabilization fund terminated; but the President may extend such period for not more than one additional year after such date by proclamation recognizing the continuance of such emergency.

Sec. 11. The Secretary of the Treasury is hereby authorized to issue, with the approval of the President, such rules and regulations as the Secretary may deem necessary or proper to carry out the purposes of this Act.

Sec. 12. Paragraph (b) (2), of section 43, title III, of the Act approved May 12, 1933 (Public, Numbered 10, Seventy-third Congress), is amended by adding two new sentences at the end thereof, reading as follows:

"Nor shall the weight of the gold dollar be fixed in any event at more than 60 per centum of its present weight. The powers of the President specified in this paragraph shall be deemed to be separate, distinct, and continuing powers, and may be exercised by him, from time to time, severally or together, whenever and as the expressed objects of this section in his judgment may require; except that such powers shall expire two years after the date of enactment of the Gold Reserve Act of 1934 unless the President shall sooner declare the existing emergency ended, but the President may extend such period for not more than one additional year after such date by proclamation recognizing the continuance of such emergency."

Paragraph (2) of subsection (b) of section 43, title III, of an act entitled "An act to relieve the existing national

economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes", approved May 12, 1933, is amended by adding at the end of said paragraph (2) the following:

"The President, in addition to the authority to provide for the unlimited coinage of silver at the ratio so fixed, under such terms and conditions as he may prescribe, is further authorized to cause to be issued and delivered to the tenderer of silver for coinage, silver certificates, in lieu of the standard silver dollars to which the tenderer would be entitled and in an amount in dollars equal to the number of coined standard silver dollars that the tenderer of such silver for coinage would receive in standard silver dollars. [fol. 67] "The President is further authorized to issue silver certificates in such denominations as he may prescribe against any silver bullion, silver, or standard silver dollars in the Treasury not then held for redemption of any outstanding silver certificates, and to coin standard silver dollars or subsidiary currency for the redemption of such silver certificates.

"The President is authorized, in his discretion, to prescribe different terms and conditions and to make different charges, or to collect different seigniorage, for the coinage of silver of foreign production than for the coinage of silver produced in the United States or its dependencies. The silver certificates herein referred to shall be issued, delivered, and circulated substantially in conformity with the law now governing existing silver certificates, except as may herein be expressly provided to the contrary, and shall have and possess all of the privileges and the legal tender characteristics of existing silver certificates now in the Treasury of the United States, or in circulation.

"The President is authorized, in addition to other powers, to reduce the weight of the standard silver dollar in the same percentage that he reduces the weight of the gold dollar.

"The President is further authorized to reduce and fix the weight of subsidiary coins so as to maintain the parity of such coins with the standard silver dollar and with the gold dollar."

Sec. 13. All actions, regulations, rules, orders, and proclamations heretofore taken, promulgated, made or issued by the President of the United States or the Secretary of the Treasury, under the Act of March 9, 1933, or under section 43 or section 45 of title III of the Act of May 12, 1933, are hereby approved, ratified, and confirmed.

Sec. 14. (a) The Second Liberty Bond Act, as amended, is further amended as follows:

(1) By adding at the end of section 1 (U. S. C., title 31, sec. 752; Supp. VII, title 31, sec. 752), a new paragraph as follows:

"Notwithstanding the provisions of the foregoing paragraph, the Secretary of the Treasury may from time to time, when he deems it to be in the public interest, offer such bonds otherwise than as a popular loan and he may make allotments in full, or reject or reduce allotments upon any applications whether or not the offering was made as a popular loan."

(2) By inserting in section 8 (U. S. C., title 31, sec. 771), after the words "certificates of indebtedness", a comma and the words "Treasury bills."

(3) By striking out the figures "$7,500,000,000" where they appear in section 18 (U. S. C., title 31, sec. 753) and inserting in lieu thereof the figures "$10,000,000,000."

(4) By adding thereto two new sections, as follows:

"Sec. 19. Notwithstanding any other provisions of law, any obligations authorized by this Act may be issued for the purchase, redemption, or refunding, at or before maturity, of any outstanding bonds, notes, certificates of indebtedness, or Treasury bills, of the United States, or to obtain funds for such purchase, redemption, or refunding, under such rules, regulations, terms, and conditions as the Secretary of the Treasury may prescribe.

"Sec. 20. The Secretary of the Treasury may issue any obligations authorized by this Act and maturing not more than one year from the date of their issue on a discount [fol. 68] basis and payable at maturity without interest. Any such obligations may also be offered for sale on a competitive basis under such regulations and upon such

terms and conditions as the Secretary of the Treasury may prescribe, and the decisions of the Secretary in respect of any issue shall be final."

(b) Section 6 of the Victory Liberty Loan Act (U. S. C., title 31, sec. 767; Supp. VII, title 31, secs. 767-767a) is amended by striking out the words "for refunding purposes", together with the preceding comma, at the end of the first sentence of subsection (a).

(c) The Secretary of the Treasury is authorized to issue gold certificates in such form and in such denominations as he may determine, against any gold held by the Treasurer of the United States, except the gold fund held as a reserve for any United States notes and Treasury notes of 1890. The amount of gold certificates issued and outstanding shall at no time exceed the value, at the legal standard, of the gold so held against gold certificates.

Sec. 15. As used in this Act the term "United States" means the Government of the United States; the term "the continental United States" means the States of the United States, the District of Columbia, and the Territory of Alaska; the term "currency of the United States" means currency which is legal tender in the United States, and includes United States notes, Treasury notes of 1890, gold certificates, silver certificates, Federal Reserve notes, and circulating notes of Federal Reserve banks and national banking associations; and the term "person" means any individual, partnership, association, or corporation, including the Federal Reserve Board, Federal Reserve banks, and Federal Reserve agents. Wherever reference is made in this Act to equivalents as between dollars or currency of the United States and gold, one dollar or one dollar face amount of any currency of the United States equals such a number of grains of gold, nine tenths fine, as, at the time referred to, are contained in the standard unit of value, that is, so long as the President shall not have altered by proclamation the weight of the gold dollar under the authority of section 43, title III, of the Act approved May 12, 1933, as heretofore and by this Act amended, twenty-five and eight tenths grains of gold, nine tenths fine, and thereafter such a number of grains of gold, nine tenths fine, as the President shall have fixed under such authority.

Sec. 16. The right to alter, amend, or repeal this Act is hereby expressly reserved. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

Sec. 17. All Acts and parts of Acts inconsistent with any of the provisions of this Act are hereby repealed.

Approved, January 30, 1934.

[fol. 69] Supplement

A. Amendments

Amendment to Provisional Regulations Issued under the Gold Reserve Act of 1934

Treasury Department,
Office of the Secretary,
March 8, 1934.

The Provisional Regulations issued on January 30, 1934, under the Gold Reserve Act of 1934, as amended on January 31, 1934, are further amended in sections 45 and 46 by deleting therefrom the phrase "March 15, 1934" wherever it appears and inserting in lieu thereof the phrase "May 1, 1934".

H. Morgenthau, Jr., Secretary of the Treasury.

Approved: (Signed) Franklin D. Roosevelt, The White House, March 8, 1934.

Amendment to Provisional Regulations Issued under the Gold Reserve Act of 1934

Treasury Department,
Office of the Secretary,
April 19, 1934.

The Provisional Regulations issued on January 30, 1934, under the Gold Reserve Act of 1934, as amended are further amended in sections 45 and 46 by deleting therefrom the word and figures "May 1, 1934" wherever they appear in said sections, as amended March 8, 1934, and

inserting in lieu thereof the word and figures "June 1, 1934".

(Signed) H. Morgenthau, Jr., Secretary of the Treasury.

Approved: (Signed) Franklin D. Roosevelt, The White House, April 20, 1934.

Amendment to Provisional Regulations Issued under the Gold Reserve Act of 1934

Treasury Department,
Office of the Secretary,
October 16, 1934.

The Provisional Regulations issued on January 30, 1934, under the Gold Reserve Act of 1934, as amended, are further amended in section 19 by deleting the last sentence thereof, and by adding the following paragraphs:

"Gold amalgam which results from the addition of mercury to gold in its natural state recovered from natural deposits in the United States or a place subject to the [fol. 70] jurisdiction thereof, may be heated to a temperature sufficient to separate the mercury from the gold (but not to the melting temperature of gold) without a license by the person who recovered the gold from such deposits, or his duly authorized agent or employee. The retort sponge resulting from such heating of such gold amalgam may be held and transported by such person without a license: Provided, however, That no such person may hold at any one time an amount of such retort sponge which exceeds in fine gold content 200 troy ounces. Such retort sponge may be acquired from such persons by the United States or by persons holding licenses on form TGL-13 or TGL-14, but by no other person.

"Except as provided in article II, and in section 33, gold in its natural state may be melted or treated or exported only to the extent permitted by, and subject to the conditions prescribed in, or pursuant to, article III."

(Signed) H. Morgenthau, Jr., Secretary of the Treasury.

Approved: Franklin D. Roosevelt. October 22, 1934.

B. General Rulings

General Ruling No. 1 under the Gold Reserve Act of 1934, and Regulations Issued Pursuant Thereto

Pursuant to the authority conferred upon me by section 8 of the Gold Reserve Act of 1934, and by section 35 (d) of the regulations issued thereunder as amended, I hereby authorize each and every United States mint and assay office, subject to the conditions in said regulations and in the general regulations governing the mints and subject to the conditions hereinbelow specified, to purchase at the purchase price prescribed under section 42 of the said regulations, as amended, or at such price as may hereafter be prescribed under authority of said section, gold which such mint or assay office is satisfied was refined (or is equivalent to gold refined) from gold-bearing materials imported into the United States, whether such importation occurred before, on, or after January 30, 1934, and whether such gold or gold-bearing materials have been in customs' custody throughout the period in which they have been within the customs' limits of the continental United States.

Before any such gold may be purchased under this ruling, the requirements of paragraph (1), (2), and (3) of section 32 of the regulations issued under the aforesaid act must be shown to have been complied with, and in addition the depositor shall have filed an affidavit in duplicate on form TG-26, together with two duly attested copies of the settlement sheet covering the gold-bearing materials imported: Provided, however, That any person hereafter importing gold-bearing materials and offering the gold extracted therefrom for sale to a mint or assay office other than the mint at San Francisco or the assay office at New York must have caused the copy of the entry described in paragraph (1) of said section 32 and the attested copy of the record described in paragraph (3) of said section 32, to be forwarded to the mint or assay office to which he is offering the aforesaid gold for sale instead of to the mint at San Francisco or the assay office at New York: and Provided further, That gold extracted from gold-bearing materials heretofore imported into the United States may be sold to any United States mint or assay office, but before [fol. 71] it is purchased by any other mint or assay office

than the one to which the copy of the entry described in paragraph (1) of said section 32 and the attested copy of the record described in paragraph (3) of said section 32 were sent, the depositor of such gold shall have caused the aforesaid copy of entry and attested copy of record to be forwarded by the mint or assay office in which they were first filed to the mint or assay office to which he proposes to sell such gold.

The declaration described in paragraph (1) of section 32, whether made before or after the promulgation of this ruling, shall be deemed to constitute a declaration of intention either of exporting the gold extracted (or the equivalent of the gold extracted) from the gold-bearing materials with respect to which such declaration was made, or of selling the same in accordance with this ruling.

No gold shall be accepted for purchase under authority of this ruling unless it is delivered to the mint and all of the terms of this ruling complied with within seven months from the date of the formal entry into the United States of the gold-bearing materials from which it was extracted.

H. Morgenthau, Jr., Secretary of the Treasury.

Dated February 20, 1934.

General Ruling No. 2 under the Gold Reserve Act of 1934, and Regulations Issued Pursuant Thereto

Pursuant to the authority conferred upon me by the Gold Reserve Act of 1934 and by section 35 (d) of the regulations issued thereunder, as amended, I hereby authorize each and every United States mint and assay office, subject to the conditions in said regulations, and in the general regulations governing the mints and assay offices, and subject to the conditions hereinbelow specified, to purchase at the purchase price prescribed under section 42 of said regulations, as amended, or at such price as may hereafter be prescribed under authority of said section, gold imported into the United States prior to January 31, 1934, which has been in customs' custody throughout the period in which it shall have been within the customs' limits of the continental United States.

No deposit of such gold shall be accepted unless accompanied by an affidavit properly executed in duplicate on form TG-23. Such gold may be purchased even though the

depositor has no license to acquire, hold, or import said gold.

H. Morgenthau, Jr., Secretary of the Treasury.

Dated March 2, 1934.

General Ruling No. 3 Issued under the Gold Reserve Act of 1934 and the Regulations Issued Pursuant Thereto

Pursuant to the authority conferred upon me by section 8 of the Gold Reserve Act of 1934, and by subdivision (d) of section 35 of the Provisional Regulations issued thereunder, as amended, I hereby authorize each and every United States mint and assay office, subject to the conditions in said regulations and in the general regulations governing the mints and subject to the conditions hereinbelow specified, to purchase at the purchase price prescribed in section 42 of said Provisional Regulations, as amended, [fol. 72] or at such price as may hereafter be prescribed under authority of said section, gold contained in deposits of silver which are receivable by the United States mints and assay offices under the proclamation of August 9, 1934, provided such mints and assay offices are satisfied—

(a) That the deposit of gold and silver does not contain more than 200 parts of gold in 1,000 by assay;

(b) That the gold has not been held at any time in noncompliance with the act of March 9, 1934, any Executive order or orders of the Secretary of the Treasury issued thereunder or in noncompliance with any regulations prescribed under such orders or licenses issued pursuant thereto, and has not been acquired or held, transported, melted, or treated, or held in custody in violation of the Gold Reserve Act of 1934 or any regulations or licenses issued thereunder; and

(c) That the gold was not mixed with such silver for the purpose of selling to the United States gold, which was not eligible for purchase by the United States under subdivisions (a), (b), or (c) of section 35 of the Provisional Regulations issued under the Gold Reserve Act of 1934 or under general rulings no. 1 or 2 issued under subdivision (d) of said section 35 of said regulations.

(Signed) Stephen B. Gibbons, Acting Secretary of the Treasury.

August 31, 1934.

General Ruling No. 4 Issued under the Gold Reserve Act of 1934 and the Regulations Issued Pursuant Thereto

Pursuant to the authority conferred upon me by section 8 of the Gold Reserve Act of 1934, and by subdivision (d) of section 35 of the Provisional Regulations issued thereunder, as amended, I hereby authorize each and every United States mint and assay office, subject to the conditions in said regulations and in the general regulations governing the mints and subject to the conditions hereinbelow specified, to purchase at the purchase price prescribed in section 42 of the Provisional Regulations, as amended, or at such price as may hereafter be prescribed under authority of said section, from any person regularly engaged in an industry, profession, or art in which gold is used, processed, or manufactured, gold filings, clippings, pieces, and the like which were not acquired by such person in such form, but which have accrued directly from, and as a result of, the legitimate, customary, and ordinary conduct of such person's industry, profession, or art.

The mints and assay offices shall not purchase any gold under this ruling unless the deposit of such gold is accompanied by a duly executed affidavit on form TG-27 and unless they are satisfied that the gold was acquired, held, melted and treated, and transported in accordance with a license issued pursuant to section 23 of the Provisional Regulations, or as permitted without a license under article II or section 21 of such regulations.

No mint or assay office shall purchase under this ruling any gold filings, clippings, pieces or the like from any person who has acquired such gold in such form from any other person.

(Signed) H. Morgenthau, Jr., Secretary of the Treasury.

November 26, 1934.

[fol. 73] General Ruling No. 5 Issued under the Gold Reserve Act of 1934 and the Regulations Issued Pursuant Thereto

Pursuant to the authority conferred upon me by section 8 of the Gold Reserve Act of 1934, and by subdivision (d) of section 35 of the Provisional Regulations issued thereunder, as amended, I hereby authorize each and every United

States mint and assay-office, subject to the conditions in said regulations and in the general regulations governing the mints and assay offices and subject to the conditions hereinafter specified, to purchase at the price prescribed in section 42 of the Provisional Regulations, as amended, or at such price as may hereinafter be prescribed in such section, gold refined from sweeps purchased, subsequent to the date of this ruling, from a United States mint or assay office.

The United States mints and assay offices shall not purchase any gold under this ruling unless the deposit of such gold is accompanied by a duly executed affidavit on form TG-28.

H. Morgenthau, Jr., Secretary of the Treasury.

December 31, 1934.

[fol. 74] Treasury Department, Office of the Secretary

October 16, 1934.

Amendment to Provisional Regulations

Issued under the Gold Reserve Act of 1934

The Provisional Regulations issued on January 30, 1934, under the Gold Reserve Act of 1934, as amended, are further amended in section 19 by deleting the last sentence thereof, and by adding the following paragraphs:

"Gold amalgam which results from the addition of mercury to gold in its natural state recovered from natural deposits in the United States or a place subject to the jurisdiction thereof, may be heated to a temperature sufficient to separate the mercury from the gold (but not to the melting temperature of gold) without a license by the person who recovered the gold from such deposits, or his duly authorized agent or employee. The retort sponge resulting from such heating of such gold amalgam may be held and transported by such person without a license: Provided, however, that no such person may hold at any one time an amount of such retort sponge which exceeds in fine gold content 200 troy ounces. Such retort sponge may be acquired from such persons by the United States or by persons holding licenses on form TGL-13 or TGL-14, but by no other person.

"Except as provided in article II, and in section 33, gold in its natural state may be melted or treated or exported only to the extent permitted by, and subject to the conditions prescribed in, or pursuant to, article III."

H. Morgenthau, Jr., Secretary of the Treasury.

Approved: Franklin D. Roosevelt. October 22, 1934.

[fol. 75] Treasury Department, Office of the Secretary

April 19, 1934.

Amendment to Provisional Regulations

Issued under the Gold Reserve Act of 1934

The provisional Regulations issued on January 30, 1934, under the Gold Reserve Act of 1934, as amended, are further amended in sections 45 and 46 by deleting therefrom the word and figures "May 1, 1934" wherever they appear in said sections, as amended March 8, 1934, and inserting in lieu thereof the word and figures "June 1, 1934".

H. Morgenthau, Jr., Secretary of the Treasury.

Approved: Franklin D. Roosevelt, The White House, April 20, 1934.

Treasury Department, Office of the Secretary

March 8, 1934.

Amendment to Provisional Regulations

Issued under the Gold Reserve Act of 1934

The Provisional Regulations issued on January 30, 1934 under the Gold Reserve Act of 1934, as amended on January 31, 1934, are further amended in Sections 45 and 46 by deleting therefrom the phrase "March 15, 1934" wherever it appears and inserting in lieu thereof the phrase "May 1, 1934".

H. Morgenthau, Jr., Secretary of the Treasury.

Approved: Franklin D. Roosevelt, The White House, March 8, 1934.

[fol. 76] DEBTOR'S EXHIBIT "A"

UNITED STATES OF AMERICA,
Treasury Department, Washington:

April 2, 1935.

Pursuant to the provisions of Section 661, Chapter 17, Title 28 of the United States Code (Section 882 of the Revised Statutes of the United States), I hereby certify that the annexed

Typewritten copy of telegram of Instructions of January 17, 1934, to all Federal Reserve banks,

Typewritten copy of part of telegram of February 1, 1934, to all Federal Reserve banks,

Typewritten copy of part of telegram of February 7, 1934, to all Federal Reserve banks,

are true copies of the initialed carbons on file in this Department.

In witness whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

F. A. Birgfeld, Chief Clerk, Treasury Department.

B. B. (Seal.)

Telegram

Official Business—Government Rates

Washington, Jan. 17, 1934.

To Governors, Federal Reserve Banks.

Boston, Mass.	Chicago, Ill.
New York, N. Y.	St. Louis, Mo.
Philadelphia, Pa.	Minneapolis, Minn.
Cleveland, Ohio.	Kansas City, Mo.
Richmond, Va.	Dallas, Texas.
Atlanta, Ga.	San Francisco, Calif.

As fiscal agent of the United States you will kindly be governed by the following instructions which you are re- [fol. 77] quested to have printed and distributed in the same

manner as requested in my telegram of December 28 with respect to the Order of that date Colon Quote

(Instructions to telegrapher—Here take in attached instructions of the Secretary of the Treasury.)

Morgenthau.

Private Wire.

"The Order of the Secretary of the Treasury dated January 15, 1934, supplementing the Order of December 28, 1933, Requiring the Delivery of Gold Coin, Gold Bullion and Gold Certificates to the Treasurer of the United States provides, in part, as follows:

"* * * I, Henry Morgenthau, Jr., Secretary of the Treasury, do hereby fix midnight of Wednesday, January 17, 1934, as the expiration of the period within which any gold coin, gold bullion, or gold certificates may be paid and delivered to the Treasurer of the United States in compliance with the requirements contained in such Order of December 28, 1933, as amended.

'In the event that any gold coin, gold bullion or gold certificates withheld in noncompliance with said Order and of this Order are offered after January 17, 1934, to the Secretary of the Treasury, the Treasurer of the United States, any United States mint or assay office, or to any fiscal agent of the United States, there shall be paid therefor only such part or none of the amount otherwise payable therefor as the Secretary of the Treasury may from time to time prescribe and the whole or any balance shall be retained and applied to the penalty payable for failure to comply with the requirements of such Order and of this Order. The acceptance of any such coin, bullion, or certificates after January 17, 1934, whether or not a part or all of the amount otherwise payable therefor is so retained, shall be without prejudice to the right to collect by suit or otherwise the full penalty provided in Section 11 (n) of the Federal Reserve Act, as amended, less such portion of the penalty as may have been retained as hereinbefore provided.'

[fol. 78] Subject to the rights reserved in said Order of January 15, 1934, supplementing the Order of December 28, 1933, requiring the delivery of gold coin, gold bullion and gold certificates to the Treasurer of the United States, and without prejudice to the right to alter or amend these instructions from time to time by notice to the Treasurer of

the United States, the United States Mints and Assay Offices, and the Federal reserve banks, I do hereby prescribe that in the event that any gold coin, gold bullion or gold certificates held in noncompliance with said Order of December 28, 1933, as amended, and said Order of January 15, 1934, are offered after January 17, 1934, to the Secretary of the Treasury, the Treasurer of the United States, any United States Mint or Assay Office or to any fiscal agent of the United States, the Secretary of the Treasury, the Treasurer of the United States, any United States Mint or Assay Office, and the fiscal agents of the United States shall pay for such gold coin and gold certificates the dollar face amount thereof, and for gold bullion $20.67 an ounce. Member banks of the Federal Reserve System may receive such gold coin, gold bullion and gold certificates for account of the Treasurer of the United States and forthwith forward the same to the Secretary of the Treasury, the Treasurer of the United States, any United States Mint or Assay Office or any fiscal agent of the United States, whichever is nearest.

H. Morgenthau, Jr., Secretary of the Treasury."

Telegram

Official Business—Government Rates

Washington, Feb. 1, 1934.

To Governors, Federal Reserve Banks.

Boston, Mass.	Chicago, Ill.
New York, N. Y.	St. Louis, Mo.
Philadelphia, Pa.	Minneapolis, Minn.
Cleveland, Ohio.	Kansas City, Mo.
Richmond, Va.	Dallas, Texas.
Atlanta, Ga.	San Francisco, Calif.

[fol. 79] Proclamation signed January 31, 1934, by President reducing gold content of dollar does not alter instructions as to amount to be paid or other instructions contained in my January seventeenth telegram relating to wrongfully withheld gold delivered after January seventeenth and my January nineteenth telegram relative to mutilated coin.

* * *

Morgenthau.

Private Wire.

Telegram

Official Business—Government Rates

Washington, Feb. 7, 1934.

To Governors, Federal Reserve Banks.

Boston, Mass.	Chicago, Ill.
New York, N. Y.	St. Louis, Mo.
Philadelphia, Pa.	Minneapolis, Minn.
Cleveland, Ohio.	Kansas City, Mo.
Richmond, Va.	Dallas, Texas.
Atlanta, Ga.	San Francisco, Calif.

Referring to my February one telegram concerning wrongfully withheld gold hereafter delivered Stop You are requested, if you have not already done so, to advise all banks in your district that the Proclamation signed January 31, 1934, by the President reducing the gold content of the dollar does not alter instructions as to the amount to be paid for wrongfully withheld gold coin, gold bullion and gold certificates hereafter delivered or other instructions contained in my January seventeen telegram and my January nineteen telegram relative to mutilated coin. * * *

Morgenthau.

Private Wire.

[fol. 80] DEBTOR'S EXHIBIT "B"

Application for License to Acquire and Hold, Transport, Melt and Treat, Import, and/or Hold for Domestic Account Gold for Use in Industry, Profession, or Art, or for Sale to the United States.

(To be executed and filed in duplicate with the United States Mint or Assay Office for the mint district in which the applicant's principal place of business is located.)

To the United States Mint or Assay Office at—:

In accordance with the Gold Reserve Act of 1934 and the Regulations issued thereunder, the undersigned hereby makes application to acquire from time to time and hold in

stock, transport, melt and treat, import, and/or hold for domestic account gold for legitimate and customary use in industry, profession, or art, or for sale to the United States as hereinafter set forth:

A. The name of the applicant is —— —— and applicant's principal place of business is located at (Street) (City) (State).

B. (1) The applicant has since (Date) been engaged in the business of furnishing scrap gold for industry, profession, or art, or for sale to the United States (State nature of applicant's business).

(2) The applicant has since (Date) been engaged in the business of furnishing gold (other than scrap gold) or processing gold for industry, profession, or art, or for sale to the United States (State nature of applicant's business).

(3) The applicant has since (Date) been engaged in an industry, profession, or art in which stocks of gold in excess of 25 fine troy ounces are required to be maintained by the applicant for direct use in such industry, profession, or art (State nature of applicant's business).

C. The applicant now holds or formerly held Treasury License TGL bearing Serial No. — issued by the United [fol. 81] States (Mint Assay Office) as — authorizing the acquisition and holding of — troy ounces of fine gold.

D. The applicant actually used for the legitimate and customary requirements of his business during the year preceding the date hereof — troy ounces of fine gold.

If the applicant has filled out B(1) and/or B(2) above, he should also state the industries, professions, and arts to which he furnished, or for which he processed, gold for legitimate and customary uses during the year preceding the date hereof (State general types of industries, professions, and arts, and not names of individual organizations).

E. In order to supply the legitimate and customary requirements of his business for a period of 3 months applicant needs to carry a stock of gold in the amount of — fine troy ounces.

F. The applicant shall state—

(1) If an individual

Whether or not any applications have been filed by or licenses issued to any partnership, association, or corporation in which the applicant has a substantial interest, and if the answer is in the affirmative, state the name and address of each such partnership, association, or corporation and the mints or assay offices where such applications were filed or licenses issued:

(2) If a partnership, association, or corporation

Whether or not any applications have been filed by or licenses issued to any person having a substantial interest in such partnership, association, or corporation, and if the answer is in the affirmative, state the name and address of each such person and the mint or assay office where such applications were filed or licenses issued:

The applicant agrees that if he receives a license under Article III of the Regulations issued pursuant to the Gold Reserve Act of 1934 and thereafter acquires a principal in- [fol. 82] terest in any partnership, association, or corporation holding a license under Article III of the Regulations issued pursuant to the Gold Reserve Act of 1934, he will immediately so inform the mints and assay offices which issued said licenses. The applicant, if a partnership, association, or corporation, agrees that if a license is issued to it under Article III of the Regulations issued pursuant to the Gold Reserve Act of 1934 and thereafter a person holding a license under said Article III acquires a principal interest in the applicant, it will immediately so inform the mints and assay offices, which issued said licenses.

G. The name under which the applicant is doing business is (State name under which applicant is doing business.)

The applicant agrees to notify immediately the mint or assay office which issued his license of any change in the name under which he is doing business.

(Words "he" and "his" will, in appropriate cases, be deemed to be "she", "hers", "it", and "its".)

The undersigned will use gold acquired under authority of the license herein applied for, only for sale to the United States, or for the legitimate and customary requirements of

the industry, profession, or art in which the applicant is engaged, or for furnishing or processing it for industry, profession, or art in full compliance with the Gold Reserve Act of 1934 and the Regulations and Rulings issued thereunder. The undersigned will keep exact records of all his acquisitions and deliveries of gold and the records shall contain the name, address, and license number of each person from whom the undersigned acquires, or to whom the undersigned delivers, gold (other than fabricated gold) and shall show: (1) the amount, date and description of each such acquisition and delivery; (2) the amount of gold disposed of by fabrication; (3) the source of the gold, if imported; and (4) the total amount of gold on hand (not including gold which has been fabricated) at the end of the quarterly period for which a report is made. The undersigned also agrees to keep such records for at least a year and to make such records available for examination by a representative of the Treasury Department at any time. The undersigned will [fol. 83] comply in all respects with the Gold Reserve Act of 1934 and the Regulations and Rulings issued thereunder. No other application of the undersigned for a license under the Gold Reserve Act of 1934 and the Regulations and Rulings issued thereunder, to acquire or hold, transport, melt, treat, import, and/or hold gold for domestic account is pending with any United States mint or assay office.

(Applicant:) —— ——, by —— ——.

STATE OF ——,
County of ——, ss:

I, ———, on oath depose and say that I am the applicant in the above application for license or the (State relationship of affiant to the applicant:) —— of (Name of applicant, if applicant is other than individual:) —— ——, which is the applicant in the above application for license; that I am duly authorized to make the foregoing application on behalf of the applicant; that I have personal knowledge of the facts as set forth in said application and know the same to be true; and that I do not have knowledge of any material facts in connection with such application which are not fully and accurately set forth therein.

(Signature of affiant:) —— ——, (Address:) ——.

Subscribed and sworn to before me this — day of ——, 193-, (Officer administering oath:) —— ——.
My commission expires —— —, ——.

NOTE.—No person shall make application for a license to more than one mint or assay office; and in the event that any one person is, through misrepresentation or mistake, issued a license under Article III of the Regulations issued under the Gold Reserve Act of 1934, by more than one mint or assay office, all licenses issued to such person shall be void from the date of issuance to such person of a license by a second mint or assay office.

Copies of this form may be obtained, on request, at any [fol. 84] United States mint or assay office, any Federal reserve bank, or the Treasury Department at Washington, D. C.

Form TG-19.

Treasury Department, Office of the Secretary

Affidavit Accompanying Deposits by Persons Who Have Recovered Gold by Mining or Panning.

STATE OF ——,
County of ——, ss:

I, (Name:) —— ——, of (Address) ——, being first duly sworn on oath depose and say that I am (Title of Officer executing affidavit:) —— of (Name and address of depositor:) —— ——, of the gold described below; that I have personal knowledge of all the facts concerning said gold as set forth in this affidavit.

(A) The name and address of the depositor is

(B) The description of the shipment of gold delivered is

(C) The net weight of this shipment in troy ounces is

(D) The assay or estimated fineness in parts per thousand is

(E) The content of fine gold in troy ounces is (estimate if necessary)

(F) The United States Mint or Assay Office to which shipped is

(G) The date shipped is

(H) The source of the gold is (State whether ore, tailing, or placer, etc.)

(I) The tons of ore or tailing, or cubic yard of gravel from which this shipment was recovered are

(J) The period in which the gold was taken from the mine or placer deposit is 193 , to 193

(K) The name and location of mine or placer deposit from which the gold was recovered is

(L) The date such gold was first melted into crude metallic gold suitable for refining at a gold refinery is 193

(M) The date such gold was converted into the form in which presented is 193

[fol. 85] The gold referred to herein was recovered by this depositor by mining or panning and no part thereof has been held by this depositor, "or to the best of my knowledge, information and belief, by any other person", at any time in noncompliance with the Act of Mar. 9, 1933, any Executive Order or Orders of the Secretary of the Treasury issued thereunder, or in noncompliance with any regulations prescribed under such order or license issued pursuant thereto, or in noncompliance with the Gold Reserve Act of 1934, or any regulations or licenses issued thereunder. No part of such gold has ever entered into monetary or industrial use.

I make this affidavit for the purpose of inducing the purchase by a United States Mint or Assay Office of the gold prescribed hereinunder and in accordance with the provisions of the Gold Reserve Act of 1934, and the regulations issued thereunder.

By ——

Subscribed and sworn to before me this — day of —— 193-. ——, (Officer administering oath). My Commission expires ——, ——.

Form TG-20.

Treasury Department, Office of the Secretary

Affidavit Accompanying Deposit by Persons Who Have Recovered Gold in the Regular Course of Their Business of Operating a Custom Mill, Smelter or Refinery

STATE OF ——,
County of ——, ss:

I, (Name:) ——, of (Address:) —— being first duly sworn on oath depose and say that I am (Title of officer executing affidavit:) ——, of (Name and address of Depositor) —— the depositor of the gold described below; that I have

personal knowledge of all the facts concerning said gold as set forth in this affidavit:

(A) The name and address of the depositor is

[fol. 86] (B) The description of the shipment of gold delivered is

(C) The net weight of this shipment in troy ounces is

(D) The Assay or estimate fineness in parts per thousand is

(E) The content of fine gold in troy ounces is (estimate if necessary)

Form TG-21

Treasury Department, Office of the Secretary

Affidavit Accompanying Deposits by Persons Purchasing Gold Directly by Miners or Panners

STATE OF ——,
County of ——, ss:

I, (Name:) —— ——, of (Address:) ——, being first duly sworn on oath depose and say that I am (Title of officer executing affidavit:) ——, of (Name and address of depositor:) —— ——, the depositor of the gold described below; and to the best of my knowledge, information, and belief all the facts concerning said gold as set forth in this affidavit are true:

A. The name and address of the depositor is
B. The description of the shipment of gold delivered is
C. The net weight of this shipment in troy ounces is
D. The assay or estimated fineness in parts per thousand is
E. The content of fine gold in troy ounces is (estimate if necessary)
F. The United States Mint or Assay Office to which shipped is
G. The date shipped is 193
H. The names and addresses of the persons from whom the gold was purchased (is) (are)—

1. (Name) (Address)
2. (Name) (Address)
3. (Name) (Address)

I. The amount and description of each lot purchased is—

1. (Amount purchased from person named in H(1), Date, Description

[fol. 87] 2. (Amount purchased from person named in H(2), Date, Description

3. (Amount purchased from person named in H(3), Date, Description

J. The location of the mine or placer deposit from which each lot was taken is—1. (As to the lot described in I(1)

2. (As to the lot described in I(2)

3. (As to the lot described in I(3)

K. The period in which the gold was taken from the mine or placer deposits referred to in item J is—

1. (As to the lot described in J(1) 193 , to 193
2. (As to the lot described in J(2) 193 , to 193
3. (As to the lot described in J(3) 193 , to 193

L. The depositor is the holder of Treasury License TGL bearing serial No.

All of said gold was purchased by this depositor or to the best of my knowledge, information and belief, by any other person directly from the persons who mined or panned such gold and no part thereof has been held by this depositor at any time in noncompliance with the Act of March 9, 1933, any Executive order or Orders of the Secretary of the Treasury issued thereunder or in noncompliance with any regulations prescribed under such orders or licenses issued pursuant thereto or in noncompliance with the Gold Reserve Act of 1934, or any regulations or licenses issued thereunder.

I make this affidavit for the purpose of inducing the purchase by a United States Mint or Assay Office of the gold described herein under and in accordance with the provisions of the Gold Reserve Act of 1934 and the regulations issued thereunder. No part of such gold has ever entered into monetary or industrial use.

By —— ——.

Subscribed and sworn to before me this — day of —— 193–. —— —— (Officer administering oath).
My Commission expires —— —, ——.

[fol. 88] Form TG-22

Treasury Department, Office of the Secretary

Affidavit of Depositor of Unmelted Scrap Gold

STATE OF ——,
County of ——, ss:

I, (Name of Affiant:) —— ——, of (Address:) —— being first duly sworn on oath depose and say:

1. That I am the depositor of the gold described in item 4 below, or that I am the (State relationship of affiant to depositor:) ——, of (Name and address of depositor:) —— —— which is the depositor of the gold described in item 4 below;

2. That on —— —, 193 this depositor shipped — troy ounces of gold (net weight) to the United States (Mint Assay Office) at ——;

3. That the estimated gold content of such deposit is parts per thousand, and the estimated total fine gold content of such deposit is — troy ounces;

4. That the description of the contents of such deposit is

5. The gold contained in this deposit was acquired and transported by this depositor—

(a) under authority of license number — dated —— —, 193–, issued by the United States (Mint Assay Office) at (or)

(b) Without a license, but as permitted under sections — of the Regulations issued under the Gold Reserve Act of 1934.

6. That such deposit consists entirely of unmelted scrap gold within the meaning of that term as used in the Regulations issued pursuant to the Gold Reserve Act of 1934, and does not contain any gold coin, gold derived by any person from gold coin, melted scrap gold, melted gold of any description, or gold in any form other than unmelted scrap;

7. That no part of the gold contained in such deposit has been held by the depositor in noncompliance with the Act

[fol. 89] of March 9, 1933, any Executive Order, or Orders of the Secretary of the Treasury issued thereunder, or in noncompliance with any regulations prescribed under such Orders or licenses issued, pursuant thereto, and such gold has not been acquired or held, transported, melted or treated, imported, earmarked, or held in custody for foreign or domestic account by the depositor in violation of the Gold Reserve Act of 1934, or any regulations or licenses issued thereunder; and to the best of my knowledge, information, and belief, such gold has not been acquired or held, transported, melted or treated, imported or earmarked or held in custody for foreign or domestic account by any other person in violation of any of the aforementioned acts, orders, regulations, or licenses.

I make this affidavit for the purpose of inducing the purchase by a United States Mint or Assay Office of the gold described herein, under and in accordance with the provisions of the Gold Reserve Act of 1934 and the Regulations issued thereunder.

(Signature of affiant:) —— ——.

Subscribed and sworn to before me this — day of ——, 193–. —— ——, (Officer administering oath). (Notarial Seal.) My Commission expires —— — ——.

Form TG-23

Treasury Department, Office of the Secretary

Affidavit of the Depositor of Gold (Other Than Fine Gold Bars) Imported Into the United States After January 30, 1934

STATE OF ——,
County of ——, ss:

I, (Name:) —— ——, of (Address:) —— being first duly sworn on oath depose and say that I am the depositor of the (Title of officer executing affidavit:) —— of (Name and address of depositor:) —— ——, the depositor [fol. 90] of the gold described below; that I have personal knowledge of all the facts concerning said gold as set forth in this affidavit:

A. The name and address of the depositor is

B. The description of the shipment of gold delivered is

C. The net weight of this shipment in troy ounces is

D. The assay or estimated fineness in parts per thousand is

E. The content of fine gold in troy ounces is

F. The United States Mint or Assay Office to which shipped is (Estimate if necessary)

G. The gold was shipped by (Name of foreign shipper) from the port of on the vessel

H. The date of arrival of gold in the United States was at the port of

I. Said gold has been in customs' custody throughout the period in which it has been situated within the customs' limit of the continental United States. Attach written statement of Collector of Customs or Deputy Collector of Customs in support of this statement.

This gold was imported into the United States Subsequent to January 30, 1934 and no part thereof has been held by this depositor, or to the best of my knowledge, information and belief, by any other person, at any time in noncompliance with the Act of March 9, 1933, any Executive Order or Orders of the Secretary of the Treasury issued thereunder, or in noncompliance with any Regulations prescribed under such orders or licenses issued pursuant thereto, or in noncompliance with the Gold Reserve Act of 1934, or any Regulations or licenses issued thereunder. No part of the above-described gold consists of fine gold bars, carrying a recognized stamp establishing a fineness of .899 or finer.

I make this affidavit for the purpose of inducing the purchase by a United States Mint or Assay Office of the gold described herein under and in accordance with the provisions of the Gold Reserve Act of 1934 and the Regulations issued thereunder.

By —— ——.

[fol. 91] Subscribed and sworn to before me this —— day of —— 1934. —— ——, (Officer administering oath). My Commission expires —— —, ——.

Form TG-24

Treasury Department

Application and Affidavit of Purchaser of Gold from Mint or Assay Office for Use in Industry, Profession or Art.

(To be executed and filed in duplicate with Mint or Assay Office. Purchases may be made only from Mint or Assay Office issuing applicants license.)

To the United States (Mint Assay Office) at —:

The undersigned Name of applicant: —— ——, of Address ——, (hereinafter called the applicant) hereby offers to purchase — troy ounces of fine gold and agrees to pay for the same at the rate of thirty-five ($35.00) dollars (plus ¼ of 1% thereof) per troy ounce of fine gold. This offer is made under the provisions of the Gold Reserve Act of 1934 and the regulations issued thereunder and as an inducement to such sale the applicant avers as follows:

1. The applicant is the holder of Treasury License TGL— bearing serial number — issued by the United States Assay Office at New York, authorizing the acquisition and holding of — troy ounces of fine gold for use in industry, profession or art.

2. The applicant is the owner and holder of a stock of — troy ounces of fine gold (exclusive of any fabricated gold).

3. The amount of fine gold as near as the applicant can estimate which will be required by him (it) for legitimate and customary use in his (or its) business for a period of three months from the date hereof is — troy ounces.

4. The applicant during the year preceding the date hereof used approximately — troy ounces of fine gold in the legitimate and customary operation of the industry, profesession, or art in which he (or it) is regularly engaged.

5. Any gold which the applicant holds in stock or purchases from the United States Mint or Assay Office will be [fol. 92] used exclusively by him (it) in the industry, profession, or art in which he (it) is regularly engaged.

6. The applicant has complied with the regulations issued under the Gold Reserve Act of 1934 and with the terms of his (its) license.

(Signed) —— ——, by —— ——.

STATE OF ——,
County of ——, ss:

I, —— ——, on oath depose and say that I am the applicant in the above application for license or the — of — which is the applicant in the above application for license; that I am duly authorized to make the foregoing application on behalf of the applicant; that I have personal knowledge of the facts as set forth in said application and know the same to be true; and that I do not have knowledge of any material facts in connection with such application which are not fully and accurately set forth therein.

(Signature of affiant:) —— —— (address:) ——.

Subscribed and sworn to before me this — day of —— 1934. —— —— (Officer administering oath).
My Commission expires —— — ——.

NOTE.—Under Article 7, Section 43 of the regulations issued pursuant to the Gold Reserve Act of 1934, United States Mints and Assay Offices are authorized to refuse to sell gold in amounts less than twenty-five ounces. Mints and Assay Offices are authorized to sell gold only to persons licensed by the selling Mint or Assay Office to acquire such gold for use in industry, profession, or art.

———

[fol. 93] IN UNITED STATES DISTRICT COURT

PETITIONER'S MOTION FOR FINDING FOR THE PETITIONER—
Received April 10, 1935; Denied July 2, 1935

Now comes the Holyoke Water Power Company, the above-named petitioner, and moves that on the law and the evidence the court make a finding for the petitioner.

Holyoke Water Power Company, by Warren, Garfield, Whiteside & Lamson, Avery, Healy, Gaylord & Button, Attorneys.

July 2, 1935. Motion denied. E. H. B., D. J.

In United States District Court

Debtor's Motion for Denial of Petition of Holyoke Water Power Company — Received April 10, 1935; Granted July 2, 1935

The American Writing Paper Company, Incorporated, the above-named debtor, hereby moves at the conclusion of the evidence on the petition of the Holyoke Water Power Company filed herein on January 18, 1935, that said petition be denied and dismissed.

By its Attorneys, Claude R. Branch, Charles P. Curtis, Jr.

July 2, 1935. Motion granted. E. H. B., D. J.

In United States District Court

Petitioner's Requests for Rulings of Law—Received April 10, 1935

1. The contracts in suit permit the debtor to satisfy them

(a) in a quantity of gold equal in amount to the gold coin specified in the respective contracts, or

(b) the equivalent of this commodity in United States currency.

2. The words "a quantity of gold equal in amount to $— of the gold coin of the United States" * * * as used in [fol. 94] the contracts in suit, mean a quantity of gold bullion equal to the amount of the gold bullion contained in such coin, and do not constitute a contract for the payment of money, but are a contract for the payment of gold bullion as a commodity.

3. The words "the equivalent of this commodity in United States currency" as used in the contracts in suit, mean the equivalent in value of the gold bullion, referred to in the contracts, in United States currency.

4. The equivalents in currency of the quantities of gold payable at the option of the debtor, under the indentures in question, are to be measured by the following rule: $1

face amount of currency equals such a number of grains of gold, nine-tenths fine, as were, on the respective dates, contained in the standard unit of value; that is, fifteen and five twenty-firsts grains of gold, nine-tenths fine or 13-15/21 grains of gold, one thousand fine.

5. During the years referred to in the contracts in suit as determining the amount required to satisfy them, the gold coin of the United States was fixed by law at nine-tenths fine, consisting of nine-tenths pure gold and one-tenth alloy.

6. The contracts in suit required satisfaction thereof either in gold as a commodity or in the value of that gold in United States currency.

7. It is not a defence to the cause of action that gold was not obtainable by the debtor in the United States if such be found to be the fact.

8. What the petitioner would have received for the commodity in suit had the defendant delivered it is not material.

9. The measure of damages is based upon what the petitioner would have to pay at the nearest available free and open market for the commodity in suit.

10. The amount of United States currency which the defendant was obligated to pay under its adoption of the second alternative referred to in the contracts in suit is based upon what it would cost the petitioner to obtain the commodity referred to in the first alternative in said con- [fol. 95] tracts in the nearest available open and free market with proper adjustment for shipping charges and insurance.

11. If there was no free market for gold in the United States on July 1, 1934, October 1, 1934, and January 1, 1935, or if the debtor was unable to obtain gold in the United States to satisfy the first alternative in the contract, performance of the first alternative was not impossible, since there was nothing in the contract or in the law to prevent the debtor from obtaining such gold in the free market of London and delivering the same in that city to the petitioner or to its order, nor was there anything in the contract or in the law to prevent the debtor from

making such delivery at the nearest accessible point to Holyoke in which no restrictions existed against such delivery and acceptance, and consequently, if the debtor chose the second alternative, the equivalent amount of currency payable would be the value of the gold had the debtor acquired it in the free London market.

12. It is not a defence to the cause of action that gold could not be disposed of by the petitioner in the United States, if such be found to be the fact, except to the United States or its agencies upon its own terms.

13. The petitioner's damages are to be measured by the value of gold in Holyoke, Massachusetts, where and on July 1, 1934, October 1, 1934, and January 1, 1935, when the rental was payable.

14. The amount of United States currency which the debtor was obligated to pay under its adoption of the second alternative referred to in the contracts in suit is based upon what the United States would pay, on the days designated by the contracts in suit for payment, for the commodity referred to in the first alternative in said contracts, with proper adjustment for shipping charges and insurance.

15. The amount of United States currency which the debtor was obligated to pay if it was unable to obtain and/or to deliver the commodity referred to in the respective contracts in suit is based upon what the United States on the days designated for payment would pay for the quantities of such commodity referred to in the respective contracts, with proper adjustment for shipping charges and insurance.

[fol. 96] 16. Since January 31, 1934, the price which the United States will pay for gold has at all times been fixed by Treasury Regulations issued on that date under the Gold Reserve Act of 1934 at $35 (less one-quarter of one percent) per troy ounce of fine gold and less all mint charges.

17. If the court finds that the only market price for gold was the price obtainable from the United States on July 1, 1934, October 1, 1934, and January 1, 1935, then the petitioner was entitled to receive in currency at Holyoke, Massachusetts, on July 1, 1934, the sum of $37,409.23; on

October 1, 1934, the sum of $507.13; on January 1, 1935, the sum of $33,516.61.

18. If the court finds that the only market price for gold was the price obtainable from the United States on July 1, 1934, October 1, 1934, and January 1, 1935, then the petitioner was entitled to receive the sum of $35, less one-quarter of one percent, for each ounce of gold contained in the gold coins specified in the respective contracts, with proper adjustments for mint charges, shipping charges and insurance.

19. Public Resolution No. 10 of the 73rd Congress as approved by the President on June 5, 1933, has no application to the case at bar.

20. The provision contained in the Joint Resolution of Congress of June 5, 1933, that "Every obligation * * * whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts.", does not apply to the contracts in question.

21. The contract of the American Writing Paper Company, Incorporated, to pay "a quantity of gold equal in amount to $1500 of the gold coin of the United States of the standard of weight and fineness of the year 1894", is not by its very terms susceptible of being discharged "dollar for dollar" in any coin or currency.

22. If Public Resolution No. 10 of the 73rd Congress has any application to the case at bar, then the term "obligation", as used therein, refers to the obligation of the debtor, as it has elected to pay in currency, to pay such amount [fol. 97] of currency as is equivalent to the market value of the commodity referred to in the first alternative of the contracts in suit.

23. If Public Resolution No. 10 of the 73rd Congress requires the petitioner to receive in satisfaction of the contracts in suit an amount of legal tender in United States currency equal, dollar for dollar, to the number of gold dollars referred to in said contracts, then said Public Resolution is unconstitutional and void and especially contrary to the Fifth Amendment to the Constitution of the United States.

24. Public Resolution No. 10 of the 73rd Congress if held applicable to the case at bar is beyond the powers delegated to the United States and is unconstitutional and void and especially contrary to the Tenth Amendment to the Constitution of the United States.

25. If Public Resolution No. 10 of the 73rd Congress affects the contracts in suit, it is unconstitutional and void and especially contrary to the Fifth and Tenth Amendments to the Constitution of the United States.

Respectfully submitted, Warren, Garfield, Whiteside & Lamson, Avery, Healy, Gaylord & Button, Attorneys for the Petitioner.

BREWSTER, J.:

Petitioner's requests numbers 1, 2, 3, 5, 6, 7, 13, 19, 20 and 21 are granted. Requests numbers 4, 8 to 12, both inclusive, and 17 and 18 are denied. Requests numbers 14, 15 and 16 are denied so far as inconsistent with my opinion.

IN UNITED STATES DISTRICT COURT

DEBTOR'S REQUESTS FOR RULINGS AND FINDINGS—Received April 10, 1935

The debtor hereby requests that the court make the following findings and rulings:

1. That the Joint Resolution of Congress of June 5, 1933, required the debtor to discharge its obligations under the indentures mentioned in the petition by payment dollar for dollar of the amounts mentioned therein.

[fol. 98] 2. That the total amount due under the several indentures mentioned in the petition on July 1, 1934, was $22,279.31.

3. That the total amount due under the several indentures mentioned in the petition on October 1, 1934, was $299.25.

4. That the total amount due under the several indentures mentioned in the petition on July 1, 1934, was $19,979.93.

5. That the gold called for by the several indentures mentioned in the petition was gold of a fineness of nine-tenths.

6. That on July 1, 1934, and likewise on July 2, 1934, it was legally impossible for either the debtor or the petitioner either to acquire or to hold gold for the purpose of discharging the obligations under the said indentures.

7. That on October 1, 1934, it was legally impossible for either the debtor or the petitioner either to acquire or to hold gold for the purpose of discharging the obligations under the said indentures.

8. That on January 1, 1935, and likewise on January 2, 1935, it was legally impossible for either the debtor or the petitioner either to acquire or to hold gold for the purpose of discharging the obligations under the said indentures.

9. That on July 1, 1934, and likewise on July 2, 1934, it was impossible in fact for either the debtor or the petitioner either to acquire or to hold gold for the purpose of discharging the obligations under the said indentures.

10. That on October 1, 1934, it was impossible in fact for either the debtor or the petitioner either to acquire or to hold gold for the purpose of discharging the obligations under the said indentures.

11. That on January 1, 1935, and likewise on January 2, 1935, it was impossible in fact for either the debtor or the petitioner either to acquire or to hold gold for the purpose of discharging the obligations under the said indentures.

12. That payment of the rentals under the indentures mentioned in the petition in gold was legally impossible on July 1, 1934, October 1, 1934, or January 1, 1935.

13. That payment of the rentals under the indentures mentioned in the petition in gold was impossible in fact on July 1, 1934, October 1, 1934, or January 1, 1935.

[fol. 99] 14. That it was legally impossible on July 1, 1934, October 1, 1934, or January 1, 1935, for the debtor to pay the petitioner a quantity of gold equal in amount to the number of dollars mentioned in the said indentures of the gold coin of the United States of the standard of weight and fineness of the years mentioned in the said indentures.

15. That it was impossible in fact on July 1, 1934, October 1, 1934, or January 1, 1935, for the debtor to pay the petitioner a quantity of gold equal in amount to the number of

dollars mentioned in the said indentures of the gold coin of the United States of the standard of weight and fineness of the years mentioned in the said indentures.

16. That the equivalent of the quantity of gold payable as rentals under the several indentures mentioned in the petition in United States currency is the amount of United States currency which the petitioner could have legally obtained for the said quantity of gold if the same had been paid to it on the respective dates on which the instalments of rental were due under the indentures.

17. That the equivalent of the quantity of gold payable as rentals under the several indentures mentioned in the petition in United States currency is the amount of money which the said quantity of gold would be worth to the petitioner for the purposes for which it could legally be used on the respective dates on which the instalments of rental were due under the indentures.

18. That the equivalent in currency of the quantity of gold called for by the several indentures mentioned in the petition on July 1, 1934, October 1, 1934, and January 1, 1935, was at the rate of $20.67 per ounce.

By its Attorneys.

Claude R. Branch. Charles P. Curtis, Jr. Russell C. Davenport.

BREWSTER, J.:

Request number 1 is denied. I do not rule on 13 and 15 as they are immaterial in view of my opinion. The remaining requests are granted.

[fol. 100] IN UNITED STATES DISTRICT COURT

FINAL DECREE—July 27, 1935

July 27, 1935. E. H. B., D. J.

This case came on to be heard at this sitting on the petition of the Holyoke Water Power Company, to establish the amount of rentals due under certain indentures for the lease of mill powers, and was argued by counsel, and there-

upon, to wit, on July 27, 1935, upon consideration thereof, it is

Ordered, adjudged and decreed that the claim of the petitioner be and the same hereby is established against this debtor for an amount obtained by multiplying the number of ounces of pure gold, namely, 2015.13567 by $20.67 per ounce. It appearing from stipulation filed in this case that the petitioner has already received this amount, it is further

Ordered, adjudged and decreed that the petitioner's petition be and the same hereby is denied and dismissed.

Witness the Honorable Elisha H. Brewster, Judge of said court, and the seal thereof, at Boston in said District, this twenty-seventh day of July, A. D. 1935.

Mary E. Prendergast, Deputy Clerk. (Seal.)

Assented to in form only. Choate, Hall & Stewart, Attorneys for Debtor.

CLAIM OF APPEAL AND ALLOWANCE THEREOF

From the foregoing final decree, the Holyoke Water Power Company claims an appeal, on August 24, 1935, to the United States Circuit Court of Appeals for the First Circuit, which appeal was allowed by the court on the same day.

[fol. 101] IN UNITED STATES DISTRICT COURT

OPINION—July 2, 1935

BREWSTER, J.:

In the above-entitled matter the Holyoke Water Power Company (hereinafter referred to as petitioner) has intervened as a creditor, in order to establish the amount of rentals due under certain indentures for the lease of mill powers. The rentals involved are those falling due July 1 and October 1, 1934, and January 1, 1935. The clause providing for the payment of semi-annual rentals, common to all of them, is as follows:

"A quantity of gold which shall be equal in amount to $— of the gold coin of the United States of the standard of

the weight and fineness of the year ——, or the equivalent of this commodity in United States currency."

The different years given in the several clauses fell within the period from 1881 to 1894, during all of which time the standard weight and fineness of the gold coin of the United States was 25.8 grains of nine-tenths fine for each dollar.

The net quantities of gold to which the petitioner would have been entitled under all of the indentures and its equivalent, according to its claim, are as follows:

July 1, 1934, 1055.978 troy ounces pure (1173.30875 9/10ths fine)	$36,959.23
Oct. 1, 1934, 14.39728 troy ounces pure (16.0992 9/10ths fine)	507.13
Jan. 1, 1935, 9447.6039 troy ounces pure (1049.73374 9/10ths fine)	33,066.61

In the case of the Holyoke Water Power Co. v. American Writing Paper Co., Inc., 9 F. Supp. 451, in a carefully considered opinion, Judge McLellan held, with respect to the debtor's obligation under these identical leases, for the rent accruing January 1, 1934, that the clauses constituted commodity contracts, as distinguished from money contracts, and that, therefore, as pre-existing contracts they did not come within the purview of the joint resolution of Congress of June 5, 1933, which provided that—

[fol. 102] "Every obligation heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts."

In that case the debtor requested the court to rule that its obligations could be discharged by payment, dollar for dollar, of the amounts mentioned in the indentures. This ruling was denied, the court stating:

"The indentures contain no covenant to pay any definite sum of money. The number of dollars mentioned was the means of determining the amount of gold to be delivered or the amount of gold the equivalent whereof was to be paid in currency. The result which the defendant seeks cannot be

reached in this way, without doing violence to the intention of the parties as expressed in their contracts."

Judge McLellan further held that the obligation to pay in gold had become impossible of performance and that there remained only the obligation to pay the equivalent of this commodity (gold) in currency. Upon the evidence before him, he concluded that the equivalent in currency would be the number of ounces of gold, called for by the respective indentures, multiplied by $20.67 per ounce, the price which the United States Treasury was then paying in legal tender currency for the gold surrendered in accordance with the Act of March 9, 1933 (12 U. S. C. A. 248), and the orders of the Secretary of the Treasury issued pursuant to said Act on December 28, 1933.

Inasmuch as the same indentures and the same parties were before the court in the earlier proceeding, I feel bound by the rulings of the learned judge, so far as applicable to the facts before me,

Wakelee v. Davis, 44 F. 532;
Shreve v. Cheesman, 69 F. 785;
Commercial Union of America, Inc. v. Anglo-South American Bank, Ltd., 10 F. (2d) 937;

[fol. 103] unless they cannot stand in the light of the recent decisions of the Supreme Court in the so-called Gold Cases.

If Judge McLellan's views are to prevail, the only question presented in the instant petition is whether they are applicable to the situation which has developed since January 1, 1934. It becomes necessary, therefore, at the outset to determine whether the ruling of Judge McLellan, denying to the lessee the right to discharge its obligation dollar for dollar in any currency which, at the time of the payment, was legal tender for public or private debts, is compatible with the decision of the Supreme Court in Norman v. B. & O. Railroad Co., 294 U. S. 240.

The debtor relies upon dictum appearing in the opinion of the Chief Justice in the following language:

"But, if the clauses are treated as 'gold value' clauses, that is, as intended to set up a measure or standard of value if gold coin is not available, we think they are still hostile to the policy of the Congress and hence subject to prohibition."

I am unable to agree with the debtor's counsel that this language is inconsistent with the conclusion reached by Judge McLellan. It is clearly manifested all through the opinion that the court is dealing with money contracts and not commodity contracts. The Chief Justice observes:

"We are of the opinion that the gold clauses now before us were not contracts for payment in gold coin as a commodity, or in bullion, but were contracts for the payment of money. The bonds were severally for the payment of $1000."

It is significant that in the language relied upon by the debtor the Chief Justice was referring to clauses intended to set up a measure or standard of value if gold coin was not available.

It is evident, from debates in the Senate upon the joint resolution of June 5, 1933, that Congress was attempting to steer clear of constitutional difficulties by limiting the repudiation of gold clauses in public and private contracts to those calling for payment of gold as currency, and not as a commodity. The definition of the word "obligation", as [fol. 104] used in the resolution, is expressly confined to "obligations payable in money of the United States". Debtor's obligations to pay a quantity of gold does not fall within the definition. The debtor contends that, since the obligation to pay gold has become impossible of performance, and the alternative is to pay its equivalent in United States currency, it comes within the definition. This contention cannot prevail over Judge McLellan's ruling to the contrary.

Notwithstanding subsequent events, to be considered later, I still hold, with Judge McLellan, that the debtor's obligation to pay rentals in gold is impossible of performance. The contracts were to be performed in Holyoke, and the debtor was under no obligation either to perform the contract in London or any other foreign market or to import the gold for the purpose of selling it to the United States mints and turning the proceeds over to the petitioner.

The court is now confronted, therefore, with the necessity of determining what amount, in available United States currency, would constitute the equivalent of the ounces of gold which the debtor undertook to pay by way of rental.

Two conflicting views are advanced by the parties. The petitioner argues that legislation enacted and regulations promulgated subsequent to January 21, 1934, have given rise to a situation which has enabled it to establish a market price for gold as a commodity considerably in excess of $20.67 an ounce.

The debtor, on the other hand, urges that the decisions of the Supreme Court in the cases of Nortz v. United States, 294 U. S. 317, and Perry v. United States, 294 U. S. 330, are controlling and admit of no conclusion other than that the price paid for gold surrendered under the orders of the Secretary of the Treasury still must prevail.

With respect to the petitioner's contention the following facts have appeared:

(1) That on January 15, 1934, the Secretary of the Treasury fixed January 17, 1934, as the expiration of the period within which gold might be delivered in compliance with the order of the Secretary of the Treasury of December 28, 1933, as amended. The Treasurer of the United States, the mints, any fiscal agent of the United States were instructed [fol. 105] to pay, after January 17, 1934, $20.67 an ounce for gold held in noncompliance with said order, but with the reservation that, in the event that any gold coin, gold bullion or gold certificates were held in noncompliance with the order and offered after January 17, 1934, "there shall be paid therefor only such part or none of the amount otherwise payable therefor as the Secretary of the Treasury may from time to time prescribe and the whole or any balance shall be retained and applied to the penalty payable for failure to comply with the requirements" of said order.

After the proclamation of the President reducing the gold content of the dollar, the instructions to pay $20.67 for gold coin, gold bullion or gold certificates, held in noncompliance with the order of the Secretary of the Treasury, continued in full force, notwithstanding devaluation, and, so far as appears, the instructions obtained on the rent days involved in this proceeding.

(2) On January 30, 1934, the Gold Reserve Act of 1934 was signed. This Act inter alia authorized the Secretary of the Treasury to purchase gold in any amounts, at home or abroad, as he might deem advantageous to the public interest and authorized the Secretary to issue rules and regula-

tions necessary and proper to carry out the purposes of this Act.

(3) On January 30 and 31, 1934, the Secretary of the Treasury issued Provisional Regulations under the Gold Reserve Act of 1934. Article VI of the Regulations related to the purchase of gold by mints, and Article VII to the sale of such gold. Under section 35 the mints were authorized to purchase (a) gold recovered from natural deposits in the United States; (b) unmelted scrap gold; (c) gold imported into the United States after January 30, 1934; and (d) such other gold as may be authorized from time to time by rulings of the Secretary of the Treasury. This section contained the following proviso:

"Provided, however, That no gold shall be purchased by any mint or assay office under the provisions of this article which, in the opinion of the mint, has been held at any time in noncompliance with the act of March 9, 1933, any Executive orders or orders of the Secretary of the Treasury issued [fol. 106] thereunder, or in noncompliance with any regulations prescribed under such orders or licenses issued pursuant thereto or which, in the opinion of the mint, has been acquired and held, transported, melted or treated or held in custody in violation of the Act or of regulations issued thereunder, including these regulations."

By section 40 the mints were authorized to purchase only such gold imported into the United States as had been in Customs custody throughout the period in which it shall have been situated within the Customs limits of the continental United States, and then only subject to certain specified provisions regarding entry and declaration to the Collector of Customs.

Section 42 of the Regulations fixed the purchase price at $35 (less ¼ of 1 percent) per troy ounce of fine gold. And section 43 authorized the mints to sell gold to persons licensed to acquire the same at the price of $35 (plus ¼ of 1 percent) per troy ounce of fine gold.

It is said that the reports issued by the Treasury Department at Washington show that since these regulations had become effective over 99 percent of the gold purchases by the Department has been made under the provisions of these regulations.

(4) On January 31, 1934, the President issued his proclamation reducing the gold content of the dollar from 25.8 grains of gold 9/10ths fine to 15 5/21sts grains of gold 9/10ths fine.

(5) There was admitted, over the objections of the petitioner, evidence that in the London market gold was sold at $35 per troy ounce.

Apparently Judge McLellan attached little importance to the reservation contained in the order of January 15, 1934, since he accepted as relevant evidence of market price the price obtainable from the government on January 17, 1934, when the price was expressly determined by executive order to be $20.67 an ounce.

If debtor's liability for rent is to be measured by the price at which certain kinds of gold are bought and sold by the United States mint, it could well be found that $35 per troy ounce was the fair market price for such gold, and in this view the price prevailing in the London market might have remote relevancy; otherwise, it could not be regarded as material.

[fol. 107] The difficulty with such a criterion is that the market for the gold purchased by the mints is closed to the petitioner. If it should receive, at Holyoke, the requisite quantity of gold called for by the indentures, it could obtain for it no more than $20.67 per troy ounce of pure gold, whether coin or bullion.

Nortz v. United States, supra;
Perry v. United States, supra.

While it is true that in the Nortz case the contract involved was for the payment of gold coin, it was nevertheless conceded that Congress had the power "to appropriate unto the government outstanding gold bullion, gold coin and gold certificates". This is precisely what was done by the Act of March 9, 1933, and the order of the Secretary of the Treasury of December 28, 1933. Any gold bullion received on account of rentals falling due in July or October, 1934, or January, 1935, would be held by the petitioner in noncompliance with the orders, and the only opportunity open to it would be to surrender it and to receive $20.67 per ounce. In no market could it obtain a better price. In Nortz v. United States, supra, the court observed:

"The asserted basis of plaintiff's claim for actual damages is that, by the terms of the gold certificates, he was entitled, on January 17, 1934, to receive gold coin. It is plain that he cannot claim any better position than that in which he would have been placed had the gold coin then been paid to him. But, in that event, he would have been required, under the applicable legislation and orders, forthwith to deliver the gold coin to the Treasury. Plaintiff does not bring himself within any of the stated exceptions."

This language would be equally applicable to gold bullion, had that been paid to Nortz. It is pertinent to the situation presented in the instant case.

To accept the petitioner's theory is to confer upon it benefits which it could not have received had the gold been delivered in accordance with the provisions of the indentures. I am of the opinion that the legislation and regulations issued [fol. 108] thereunder do not warrant a conclusion different from that of Judge McLellan in the earlier case.

Claim, therefore, may be established against this debtor for an amount obtained by multiplying the number of ounces of pure gold by $20.67 per ounce.

I sympathize with the debtor's argument that it would make for convenience and certainty if the contracts were brought within the purview of the joint resolution so that the liability could be discharged dollar for dollar, but the rights of parties, of course, cannot be determined on considerations of expediency, or convenience.

IN UNITED STATES DISTRICT COURT

PETITIONER'S ASSIGNMENT OF ERRORS—Filed August 24, 1935

The petitioner, Holyoke Water Power Company, respectfully specifies the following assignment of errors with respect to the proceedings had in the above-entitled cause and the decree entered therein on July 27, 1935:

1. That the court erred in refusing to rule as requested by the petitioner in its request for rulings numbered 4 that the equivalents in currency of the quantities of gold payable

at the option of the debtor, under the indentures in question, are to be measured by the following rule: $1 face amount of currency equals such a number of grains of gold, nine-tenths fine, as were, on the respective dates, contained in the standard unit of value; that is, fifteen and five twenty-firsts grains of gold, nine-tenths fine or 13-15/21 grains of gold, one thousand fine.

2. That the court erred in refusing to rule as requested by the petitioner in its request for rulings numbered 8 that what the petitioner would have received for the commodity in suit had the defendant delivered it is not material.

3. That the court erred in refusing to rule as requested by the petitioner in its request for rulings numbered 9 that the measure of damages is based upon what the petitioner would have to pay at the nearest available free and open market for the commodity in suit.

4. That the court erred in refusing to rule as requested by the petitioner in its request for rulings numbered 10 that the [fol. 109] amount of United States currency which the defendant was obligated to pay under its adoption of the second alternative referred to in the contracts in suit is based upon what it would cost the petitioner to obtain the commodity referred to in the first alternative in said contracts is the nearest available open and free market with proper adjustment for shipping charges and insurance.

5. That the court erred in refusing to rule as requested by the petitioner in its request for rulings numbered 11 that if there was no free market for gold in the United States on July 1, 1934, October 1, 1934 and January 1, 1935, or if the debtor was unable to obtain gold in the United States to satisfy the first alternative in the contract, performance of the first alternative was not impossible, since there was nothing in the contract or in the law to prevent the debtor from obtaining such gold in the free market of London and delivering the same in that city to the petitioner or to its order, nor was there anything in the contract or in the law to prevent the debtor from making such delivery at the nearest accessible point to Holyoke in which no restrictions existed against such delivery and acceptance, and consequently, if the debtor chose the second alternative, the equivalent amount of currency payable would be the value of the gold had the debtor acquired it in the free London market.

6. That the court erred in refusing to rule as requested by the petitioner in its request for rulings numbered 12 that it is not a defense to the cause of action that gold could not be disposed of by the petitioner in the United States, if such be found to be the fact, except to the United States or its agencies upon its own terms.

7. That the court erred in refusing to rule as requested by the petitioner in its request for rulings numbered 17 that if the court finds that the only market price for gold was the price obtainable from the United States on July 1, 1934, October 1, 1934 and January 1, 1935, then the petitioner was entitled to receive in currency at Holyoke, Massachusetts, on July 1, 1934, the sum of $37,409.23, on October 1, 1934 the sum of $507.13, on January 1, 1935 the sum of $33,516.61.

7A. That the court erred in refusing to rule as requested by the petitioner in its request for rulings numbered 17 that [fol. 110] if the court finds that the only market price for gold was the price obtainable from the United States on October 1, 1934, then the petitioner was entitled to receive in currency at Holyoke on October 1, 1934, the sum of $507.13.

8. That the court erred in refusing to rule as requested by the petitioner in its request for rulings numbered 18 that if the court finds that the only market price for gold was the price obtainable from the United States on July 1, 1934, October 1, 1934 and January 1, 1935, then the petitioner was entitled to receive the sum of $35, less one-quarter of one percent, for each ounce of gold contained in the gold coins specified in the respective contracts, with proper adjustments for mint charges, shipping charges and insurance.

9. That the court erred in refusing to rule without qualification as requested by the petitioner in its request for rulings numbered 14 that the amount of United States currency which the debtor was obligated to pay under its adoption of the second alternative referred to in the contracts in suit is based upon what the United States would pay, on the days designated by the contracts in suit for payment, for the commodity referred to in the first alternative in said contracts, with proper adjustment for shipping charges and insurance.

10. That the court erred in refusing to rule without qualification as requested by the petitioner in its request for rul-

ings numbered 15 that the amount of United States currency which the debtor was obligated to pay if it was unable to obtain and/or to deliver the commodity referred to in the respective contracts in suit is based upon what the United States on the days designated for payment would pay for the quantities of such commodity referred to in the respective contracts, with proper adjustment for shipping charges and insurance.

11. That the court erred in refusing to rule without qualification as requested by the petitioner in its request for rulings numbered 16 that since January 31, 1934, the price which the United States will pay for gold has at all times been fixed by treasury regulations issued on that date under the Gold Reserve Act of 1934 at $35 (less one-quarter of one percent) per troy ounce of fine gold and less all mint charges.

[fol. 111] 12. The court erred in ruling that the total amount due under the several indentures mentioned in the petition on July 1, 1934, was $22,279.31.

13. The court erred in ruling that the total amount due under the several indentures mentioned in the petition on October 1, 1934, was $299.25.

14. The court erred in ruling that the total amount due under the several indentures mentioned in the petition on July 1, 1934, was $19,979.93.

15. The court erred in ruling that the gold called for by the several indentures mentioned in the petition was gold of a fineness of nine-tenths.

16. The court erred in ruling that on July 1, 1934 and likewise on July 2, 1934, it was legally impossible for either the debtor of the petitioner either to acquire or to hold gold for the purpose of discharging the obligations under the said indentures.

17. The court erred in ruling that on October 1, 1934, it was legally impossible for either the debtor or the petitioner either to acquire or to hold gold for the purpose of discharging the obligations under the said indentures.

18. The court erred in ruling that on January 1, 1935 and likewise on January 2, 1935, it was legally impossible for either the debtor or the petitioner either to acquire or to

hold gold for the purpose of discharging the obligations under the said indentures.

19. The court erred in ruling that on July 1, 1934 and likewise on July 2, 1934, it was impossible in fact for either the debtor or the petitioner either to acquire or to hold gold for the purpose of discharging the obligations under the said indentures.

20. The court erred in ruling that on October 1, 1934, it was impossible in fact for either the debtor or the petitioner either to acquire or to hold gold for the purpose of discharging the obligations under the said indentures.

21. The court erred in ruling that on January 1, 1935 and likewise on January 2, 1935, it was impossible in fact for either the debtor or the petitioner either to acquire or to hold gold for the purpose of discharging the obligations under the said indentures.

[fol. 112] 22. The court erred in ruling that payment of the rentals under the indentures mentioned in the petition in gold was legally impossible on July 1, 1934, October 1, 1934 or January 1, 1935.

23. The court erred in ruling that it was legally impossible on July 1, 1934, October 1, 1934, or January 1, 1935 for the debtor to pay the petitioner a quantity of gold equal in amount to the number of dollars mentioned in the said indentures of the gold coin of the United States of the standard of weight and fineness of the years mentioned in the said indentures.

24. The court erred in ruling that the equivalent of the quantity of gold payable as rentals under the several indentures mentioned in the petition in United States currency is the amount of United States currency which the petitioner could have legally obtained for the said quantity of gold if the same had been paid to it on the respective dates on which the instalments of rental were due under the indentures.

25. The court erred in ruling that the equivalent of the quantity of gold payable as rentals under the several indentures mentioned in the petition in United States currency is the amount of money which the said quantity of gold would be worth to the petitioner for the purposes for

which it could legally be used on the respective dates on which the instalments of rental were due under the indentures.

26. The court erred in ruling that the equivalent in currency of the quantity of gold called for by the several indentures mentioned in the petition on July 1, 1934, October 1, 1934 and January 1, 1935, was at the rate of $20.67 per ounce.

27. The court erred in holding that claim may be established against the debtor for an amount obtained by multiplying the number of ounces of pure gold provided in the indentures by $20.67 per ounce.

28. The court erred in holding that the legislation passed by Congress subsequent to January 1, 1934, and the regulations issued thereunder do not warrant a conclusion different from that of McLellan, J. in the earlier case, namely, Holyoke Water Power Company v. American Writing Paper Company, Inc., Law No. 5932.

29. The court erred in basing the measure of the peti- [fol. 113] tioner's recovery upon the assumption that the petitioner would perform or would have performed an act contrary to and punishable under the laws of the United States, namely, in July or October, 1934, or in January, 1935, receiving gold in any form into its possession.

30. The court erred in holding that the petitioner can not claim any better position that that in which it would have been placed had gold been delivered to it in accordance with the provisions of the indentures.

31. That the court erred in denying the petitioner's motion for a finding for the petitioner.

32. That the court erred in allowing the debtor's motion that the petitioner's petition be dismissed.

33. That the court erred in not granting the relief prayed for in the petition.

Wherefore, the appellant prays that the aforesaid decree may be reversed and that the United States District Court for the District of Massachusetts be ordered to enter a de-

cree in accordance with the prayer of the petition or in such form as the Circuit Court of Appeals shall deem just.

Bentley W. Warren, Nathan P. Avery, James M. Healy, Donald C. Starr, Attorneys for Petitioner, Appellant. Warren, Garfield, Whiteside & Lamson, Avery, Healy & Button, of Counsel.

August 23, 1935.

RECITAL AS TO BOND ON APPEAL

Also on the said twenty-fourth day of August, 1935, a bond on appeal in the sum of two hundred fifty dollars ($250) was filed by the Holyoke Water Power Company and approved by the court, the American Surety Company of New York acting as surety.

[fol. 114] IN UNITED STATES DISTRICT COURT, DISTRICT OF MASSACHUSETTS

No. 55719. In Bankruptcy

In the Matter of AMERICAN WRITING PAPER COMPANY, INCORPORATED, Debtor under Section 77 B.

Avery, Gaylord, Healy & Button, Warren, Garfield, Whiteside & Lamson, Phipps, Durgin & Cook, Neal, Shaffner & Knowlton, Abbott, Dane, Buffum & Howe, Ropes, Gray, Boyden & Perkins. Max J. Moskow, Abraham Kamberg, Herrick, Smith, Donald & Farley, Phillips-Ketchum, Robert Cutler, David M. Palley, Jacob J. Kaplan, Nutter, McClennen & Fish.

DOCKET ENTRIES

1934.

June 23. Petition filed.
23. McLellan, J.—Order approving petition.
23. Order of notice to creditors and stockholders, retble. July 24th at 11 a. m.
23. Order authorizing debtor to continue business.

DOCKET ENTRIES—Continued

1934,

July 13. Petitions of Holyoke Water Power Co. for leave to intervene, for leave to bring proceedings and to modify injunction—Set down for hearing on June 24—Certificate of notice of hearing.

24. Affidavit of publication and mailing notices.

24. McLellan, J.—Hearing—Continued to Aug. 21st. at 11 a. m. on petition for leave to intervene and to discuss appointment of Master.

24. Order continuing debtor in business; claims to be filed with debtor on or before October 24, 1934.

24. Petition by Central Hanover Bank and Trust Co. et al., trustees for leave to intervene—Order allowing petition to intervene.

24. Petition by International Trustee for Protection of Bondholders for leave to interevene—Order allowing petition to intervene.

[fol. 115]

July 24. Petition by Holyoke Water Power Co. for leave to bring suit granted.

24. Order modifying injunction so as to allow Holyoke Water Power Co. to bring suit.

24. Balance sheet of corporation of December 31, 1933.

24. Order approving officer's compensation.

24. Petition of debtor for approval of officers' compensation.

24. Petition for order appointing special counsel for debtor—Order appointing special counsel.

Aug. 21. McLellan, J.—Order allowing petition of Holyoke Water Power Co. to intervene.

21. McLellan, J.—Order modifying injunction as to suits against debtor.

21. List of stockholders (4 vols.)

21. List of accounts payable (Sched. B).

21. Certificate of debtor as to lists of creditors and stockholders (2 parts).

28. List of persons holding or claiming interest on bonds (Sched. A & A-1).

Aug. 28. Supplemental list of creditors or claimants (Sched. B).

DOCKET ENTRIES—Continued

1934.

Aug. 28. List of suits against debtor (Sched. C).
28. Certificate of debtor as to lists of bondholders, creditors and claimants.
Sept. 7. Petition by debtor in re Registration of securities—Set down for hearing on Sept. 12th at 10 a. m.
12. Affidavit of notice.
12. McLellan, J.—Hearing—Order for registration of securities.
12. Petition for leave to employ counsel—Order authorizing debtor to employ counsel.
Oct. 1. Affidavit of publication and notices.
1. McLellan, J.—Hearing—Debtor continued in business. Debtor's report received. Petition by John P. Van Kirk for leave to intervene, etc.
4. McLellan, J.—Petition for leave to intervene granted; petition for survey and for adjudica-
[fol. 116]
tion as to insolvency and interest of stockholders reserved for further consideration.
Oct. 24. Petition by N. Frank & Sons to intervene—Set down for hearing on Oct. 29. Certificate of notice.
24. Certificate of John G. Pennypacker, James B. Tailer and Harry Hoffman.
29. McLellan, J.—Hearing continued one week.
31. Amended petition by Frank & Sons to intervene. Set down for hearing on Nov. 5—Certificate of notice.
Nov. 5. McLellan, J.—Hearing—Amended petition for leave to intervene granted—no one appearing to oppose.
6. Petition by M. Frank & Sons for reclamation.
5. Petition of Central Hanover Bank and Trust Company et al. for modification of injunction.
6. Affidavit of notice to creditors.
6. Certificate of debtor as to additional list of bondholders.
6. Report of claims filed.
8. Order on amended petition to intervene.
8. Petition to modify injunction set down for hearing on Nov. 19. Certificate of notice.

DOCKET ENTRIES—Continued

1934.

Nov. 16. Amendment to certificate of notice.
19. McLellan, J.—Hearing—Injunction modified.
24. Petition for order extending time to affirm or reject leases and executory contracts.
24. McLellan, J.—Order extending time for adopting or disapproving leases extended three months.

1935.

Jan. 18. Petition by Holyoke Water Power Co. relative to payment of rentals by the debtor.
21. Order of notice on petition of Holyoke Water Power Co. issued.
30. Answer of debtor to petition for payment of rentals.

Mar. 5. Stipulation as to petition of Holyoke Water Power Company relative to payment of rentals.
22. Petition for extension of time to affirm or reject leases and executory contracts.

[fol. 117]

Mar. 22. McLellan, J.—Order extending time as to leases and contracts to May 25, 1935.

Apr. 9. Amended answer of debtor to petition of Holyoke Water Power Co.
9. Hearing on petition of Holyoke Water Power Co. —Continued to April 10th.
10. Brewster, J.—Hearing on petition of Holyoke Water Power Co. relative to payment of rentals —Decision reserved.

May 14. Petition by H. A. Hughes et al. for leave to intervene—Set down for hearing on May 20. Certif. of notice.
22. Petition of further extension to affirm or reject leases and executory contracts.
22. McLellan, J.—Time for affirming or rejecting leases and contracts extended to July 25, 1935.
27. Petition of Choate, Hall & Stewart, attys., for reimbursement of expenses assented to by counsel for debtor—granted.

June 6. Petition to refer disputed claims to a Special Master.

DOCKET ENTRIES—Continued

1935.

June 6. Petition for order approving notice of termination of two Electrical Power contracts with Holyoke Water Power Co.

6. Petition for order on report of claims.

6. Petition for order to enter into power contract with City of Holyoke.

10. McLellan, J.—Hearing.

Claims of Holyoke Water Power Co. referred to Charles F. Lovejoy as Spec'l Master for consideration and report.

Order allowing claims set forth in schedule A, of order on claims.

Claims of American Window Cleaning Co. et al., referred to Walter L. Stevens as Special Master for consideration and report.

June 10. McLellan, J.—Hearing on petitions for order approving notice of termination of contracts and

[fol. 118]

on petition to enter into power contract continued to June 24th at 10:30 a. m.

June 10. Stipulation in re petition for reclamation.

10. McLellan, J.—Petition of N. Frank & Sons for reclamation dismissed.

24. McLellan, J.—Hearing. Order aproving giving notice of termination of electric power contracts with Holyoke Water Power Co. Hear'g on petn. to enter into power contract with Holyoke Water Power Co.—no order made.

July 2. Brewster, J.—Opinion.

2. Brewster, J.—Motion of debtor that petition of Holyoke Water Power Co. be denied and dismissed—granted.

2. Brewster, J.—Mo. of Holyoke Water Power Co. relative to payment of rentals—Denied.

10. McLellan, J.—Order on petition of Creditors Committee for leave to intervene.

10. Petition by Creditors' Committee for appointment of Trustee appraisers, etc.

17. Petition by John Van Kirk for survey of entire business set down for hearing on July 22, at 12 m.

DOCKET ENTRIES—Continued

1935.

July 22. McLellan, J.—Hearing—Order for survey by Thomas H. Blodgett without expense. No order on petition by John P. Van Kirk for survey of entire business.

10. McLellan, J.—Order of notice on petition for appointment of trustee, appraisers, etc. set down hearing on September 9th at 12 m.

27. Brewster, J.—Final decree on petition of Holyoke Water Power Co. to establish amount of rentals due.

Aug. 13. Petition of Choate, Hall & Stewart for fees and disbursements. Set down for hearing Aug. 19, at 12 m. Certif. of notice of hearing.

19. Petition of Russell L. Davenport for fees and allowances.

19. McLellan, J.—Hearing. Order making allowances on account to Choate, Hall & Stewart and to Russell L. Davenport.

[fol. 119]

Aug. 20. Petition of Choate, Hall & Stewart for disbursements.

22. Stipulation of parties as to payments of rentals to Holyoke Water Co.

23. Petition of John T. Harbine, Jr., for leave to intervene.

24. Petition of Holyoke Water Power Co. for appeal and assign't of errors.

24. Bond on appeal filed.

24. Brewster, J.—Bond approved and appeal allowed.

24. Citation on appeal issued, retble. Sept. 23, 1935.

IN UNITED STATES DISTRICT COURT

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed August 24, 1935

To the Clerk:

You are hereby requested to make up and certify as a record on plaintiff's appeal a transcript of the following, to wit:

1. Petition of Holyoke Water Power Company relative to payments of rentals by the debtor.
2. Stipulation relative to payment of rentals filed March 15, 1935.
3. Amended answer of debtor.
4. All the testimony reduced.
5. Plaintiff's Exhibits 1, 2, and 3.
6. Debtor's exhibits numbers A and B.
7. The motion of the plaintiff for a finding for the plaintiff and order thereon.
8. The motion of the debtor that the petition of the Holyoke Water Power Company be denied and dismissed and order thereon.
9. Plaintiff's requests for rulings of law.
10. Debtor's requests for rulings of law.
11. The opinion of the court.
12. The decree.
13. Recital of filing of petition for appeal and copy of assignment of errors.
14. This præcipe.

[fol. 120] 15. Docket entries.

Bentley W. Warren, Nathan P. Avery, James M. Healy, Donald C. Starr, Attorneys for the Plaintiff.
Warren, Garfield, Whiteside & Lamson, Avery, Healy & Button, of Counsel.

Service acknowledged this twenty-second day of August, 1935.

Choate, Hall & Stewart.

RECITAL AS TO CITATION AND SERVICE

A citation on appeal was issued on the twenty-fourth day of August, A. D. 1935, being made returnable in the United States Circuit Court of Appeals on the twenty-third day of September, A. D. 1935. Service of said citation was duly acknowledged by counsel for the American Writing Paper Company, Inc., debtor.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 121] [MEMORANDUM.—An order of enlargement of time for docketing case to, and including, October 23, 1935, is here omitted. A. I. Charron, Clerk.]

[fol. 122] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT, OCTOBER TERM, 1935

No. 3062

HOLYOKE WATER POWER COMPANY, Petitioner, Appellant,

v.

AMERICAN WRITING PAPER COMPANY, INC., Debtor, Appellee

Appeal from the District Court of the United States for the District of Massachusetts

Before Bingham, Wilson and Morton, JJ.

OPINION OF THE COURT—April 15, 1936

WILSON, J.:

The appellee seeks to reorganize under Sec. 77-B of the Bankruptcy Act. The appellant filed a petition in the bankruptcy court as an intervening creditor to determine the amount of a claim of the petitioner for rentals under perpetual leases by it to appellee's predecessors in title of thirteen water power rights on the Connecticut River at Holyoke, Massachusetts, entered into between 1880 and 1898 pursuant to certain proposals of sale which were incorporated in the leases.

In 1859 the Holyoke Water Company acquired the water power privileges on the Connecticut River at Holyoke, which it divided up into units of 16 hour mill powers. Of these units twenty-seven with mill sites were acquired by [fol. 123] the appellee by mesne conveyances from the grantees of the appellant. The provisions of fourteen of these leases entered into prior to 1880 were under construction by this court in 68 Fed. (2d) 261, in which the rental per unit was payable in silver bullion of two hundred and sixty ounces, troy weight, of the present standard of weight and fineness of the silver coin of the United States, or an

equivalent in gold at the option of the grantee at the time of payment.

In the thirteen indentures entered into after 1880, the rentals were made payable in a quantity of gold equal in amount to * * * dollars of gold coin of the current standard of weight and fineness, or its equivalent in currency of the United States.

The District Court held that, if gold had been delivered to the petitioner in payment of the rentals under the indentures, it could not have received therefor, under the order of the Secretary of the Treasury issued on January 15, 1934, more than $20.67 per ounce of pure gold, and issued a decree ordering that the petitioner's claim be established by multiplying the total number of ounces of pure gold included in the payments due July 1, 1934, October 1, 1934, and January 1, 1935, by $20.67 per ounce. From this decree the petitioner appealed.

While the petitioner has twenty-five assignments of error, they raise only a single issue, viz: what measure is to be applied in determining the equivalent in currency of the quantity of gold called for by the indentures in payment of the rentals on July 1, 1934, October 1, 1934, and January 1, 1935?

The parties have selected the indenture entered into on March 1, 1895, as typical of the other twelve indentures, which together form the basis of the petitioner's claim, and which provides for the payment of rental as follows:

"A quantity of gold which shall be equal to $1500 of the gold coin of the United States of the standard of weight and fineness of the year 1894, or the equivalent of this commodity in United States currency."

Counsel for the appellee urges that this is not a commodity contract. It, however, calls for the payment of "a quantity of gold" of an amount equal to the gold content of $1500 [fol. 124] of gold coins, or "the equivalent of this commodity in United States currency."

In other words, in the indenture dated March 1, 1895, the appellee agreed to pay annually for each unit of power, either 80.625 ounces, troy weight, of gold, nine-tenths fine, being equal in amount to $1500 of gold coin of the weight and fineness of gold coin of 1894, or the equivalent of this amount of gold in United States currency, which must mean in United States currency at the date of payment.

That other years than 1894 were selected in the earlier indentures involved to determine the weight and fineness of the gold coin fixed as a measure of the quantity of gold to be used in payment of the rental is immaterial, since the weight and finess of the gold in the dollar, the basic unit of United States currency, remained the same during the entire period covered by these indentures, Sec. 3511, R. S., Sec. 1, Chap. 41, Act of March 14, 1900 (31 Stat. 45), until the weight was changed by presidential proclamation on January 31, 1934.

The amount of the petitioner's claim must be determined in view of the following proclamations by the President and Secretary of the Treasury and Acts of Congress: On March 6, 1933, the President, stating that there had been a heavy withdrawal of gold and currency from our banking institutions for the purpose of hoarding and extensive speculative activity abroad in foreign exchange, which had resulted in severe drains on the nation's stocks of gold, declared a bank holiday until March 9, 1933. On that day the Secretary of the Treasury, with the President's approval, issued instructions to the Treasurer of the United States to make payments in gold in any form only under license issued by the Secretary.

On March 9, 1933, the President approved the Emergency Banking Act (48 Stat. 1). This Act amended Sec. 11 of the Federal Reserve Act (39 Stat. 752) and authorized the Secretary of the Treasury to require all persons to deliver to the Treasurer of the United States all gold coin, gold bullion and gold certificates owned by them, and that the Secretary should pay therefor an equivalent [fol. 125] amount of any other form of coin or currency coined or issued under the laws of the United States.

By executive order of April 5, 1933, forbidding hoarding of gold, all persons were required to deilver on or before May 1, 1933, to stated banks, all gold coin, gold bullion and gold certificates, the holder to receive an equivalent amount of any other form of coin or currency coined or issued under the laws of the United States.

By Sec. 43 of the Act of May 12, 1933 (48 Stat. 51) it was provided that the President should have authority, upon the making of prescribed findings and in the circumstances stated, "to fix the weight of the gold dollar in grain nine-tenths fine * * * at such amounts as he finds neces-

sary from his investigation to stabilize domestic prices or to protect foreign commerce against the adverse effect of depreciated foreign currencies"; and it was further provided that the gold dollar, the weight of which is so fixed, shall be the standard unit of value, and that all forms of money shall be maintained at a parity with this standard, but that "in no event shall the weight of the gold dollar be fixed so as to reduce its present weight by more than fifty per centum."

Congress then passed the Joint Resolution of June 5, 1933, which provided as follows:

"* * * every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public or private debts. * * * As used in this resolution, the term 'obligation' means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term 'coin or currency' means coin or currency of the United States, including Federal Reserve notes and circulating notes of the Federal Reserve Banks and national banking associations;"

[fol. 126] On December 28, 1933, the Secretary of the Treasury, pursuant to the Act of March 9, 1933, ordered every person within the jurisdiction of the United States to deliver to the Treasurer of the United States all gold coin, gold bullion and gold certificates then held by him, for which the Treasurer agreed to pay the then equivalent of gold coin or bullion, or $20.67 per ounce of pure gold, which price was based on the then gold content of the dollar.

On January 15, 1934, the Secretary of the Treasury by proclamation fixed January 17 as the last day for the delivery of gold under the order of December 28, 1933, in

which he agreed to pay for pure gold held in non-compliance with the order of December 28, 1933, and delivered thereafter, the sum of $20.67 per ounce, but with the reservation that there be paid for such gold "only such part or none of the amount" thus fixed, as the Secretary shall from time to time prescribe.

Then followed the Gold Reserve Act of January 30, 1934, Sec. 15 of which provided that:

"Wherever reference is made in this Act to equivalents as between dollars or currency of the United States and gold, one dollar or one dollar face amount of any currency of the United States equals such a number of grains of gold, nine tenths fine, as, at the time referred to, are contained in the standard unit of value, that is, so long as the President shall not have altered by proclamation the weight of the gold dollar (see Sec. 3511, R. S., Sec. 1, Chap. 41, 31 Stat. 45) under the authority of section 43, title III, of the Act approved May 12, 1933, as heretofore and by this Act amended, twenty-five and eight tenths grains of gold, nine tenths fine, and thereafter such a number of grains of gold, nine tenths fine, as the President shall have fixed under such authority."

Up to this time the equivalent of the quantity of gold provided for to be paid as rental in the indenture here under consideration was $1500 in gold dollars of 25.8 grains, nine tenths fine, or its equivalent in currency.

On the thirty-first day of January, 1934, the President issued a proclamation by which the content of the gold dollar was reduced so that thereafter it should contain only 15 5/21 grains of gold, nine tenths fine, instead of 25.8 [fol. 127] grains as formerly, so that from and after January 31, 1934, the equivalent of an ounce of pure gold measured in terms of the new gold dollar was $35.00 per ounce instead of $20.67 prior to January 31, 1934.

The question then is: the first option open to appellee to pay the rental in a quantity of gold equal to $1500 of gold coin of the standard weight and fineness of gold coin of the year 1894, having been rendered impossible of performance by executive orders, the Joint Resolution of June 5, 1933, and the orders of the Secretary of the Treasury on December 28, 1933, and January 15, 1934, and the gold dollar, the standard unit of value of United States currency, having

been devalued on January 31, 1934, by order of the President under the authority vested in him by the Act of May 12, 1933, and the Gold Reserve Act of January 30, 1934, what was the equivalent of a quantity of gold equal to $1500 of gold coin of the standard weight and fineness in 1894 in currency of the United States after January 31, 1934, when the rentals under these indentures became due?

Unless the Joint Resolution of June 5, 1933, applies to these indentures, we think the equivalent in currency of the quantity of gold named in these indentures for rentals would have to be determined in the devaluated dollar of 15 5/21 grains, which in the indenture under consideration would be $2539.69 at the rate of $31.50 per ounce for 80.625 ounces, nine tenths fine.

The judge of the District Court in these proceedings following a prior decision in the District Court in relation to rentals due prior to January 21, 1934, 9 Fed. Sup. p. 451, held that the Joint Resolution of June 5, 1933, was not applicable to the provision in these indentures.

Counsel for the appellant contends that this ruling of the District Court is not open to the appellee to contest before this court, since it did not appeal from the ruling of the District Court; but we think it is open to the appellee to urge matter appearing in the record in support of the judgment of the District Court, though his argument may involve an attack upon the reasoning of the lower court, or an insistence upon a matter overlooked or ignored by it. [fol. 128] United States v. American Railway Express Co., 265 U. S. 425, 435; Union Tool Co. v. Wilson, 259 U. S. 107, 111.

The Joint Resolution of June 5, 1933, did not affect the amount due as rentals prior to January 31, 1934, because the standard unit of value had not been changed, and did not originally in express terms apply to the provisions in these indentures, since it only applied where the obligee had the option, or right, to require payment in gold, or in a particular kind of coin or currency, or in an amount of money of the United States measured thereby. Prior to the passage of the Resolution the option to pay the rentals in a quantity of gold equal to $1500 of gold coin or in the

equivalent of this amount in currency was not in the obligee or petitioner, but rested with the obligor.

However, by the Acts of Congress and the proclamations of the President and Secretary of the Treasury above referred to, the option to discharge the obligation of the rentals by tendering the quantity of gold named in the indentures was no longer open to the obligor, thus eliminating from the indentures any option as to method of payment. The effect was to give the petitioner and obligee the right to demand the equivalent in currency of $1500 in gold coin in payment, Restatement of the Law of Contracts, (Am. Law Inst.) Sec. 469, and the obligor the right to discharge his obligation by tendering the equivalent in currency of the number of dollars in gold coin named in the rental provisions, which brought these indentures within the purview of the Joint Resolution.

The Supreme Court in Norman v. Baltimore & Ohio R. R. Co., 294 U. S. 240, p. 314, referring to the provision in the bonds of the defendant to pay the principal amount and coupons due February 1, 1934, in gold coin of the weight and fineness, in one instance of February 1, 1930, and in two other cases of May 1, 1903, said: that "if the clauses are treated as 'gold value' clauses, that is, as intended to set up a measure or standard of value if gold coin is not available, we think they are still hostile to the policy of the Congress and hence subject to prohibition," obviously referring to the prohibition contained in the Joint Resolu- [fol. 129] tion. Therefore, while the indentures involved here originally were contracts for the payment of gold as a commodity measured in gold dollars, by the Acts of Congress and the proclamations of the President and the Secretary of the Treasury above referred to, they have become contracts for the payment of money measured in terms of gold and so are also hostile to the policy of Congress.

In other words, the provisions as to rentals in these indentures by reason of the exclusion of gold for monetary use have become gold value clauses within the meaning of the decisions in Norman v. Baltimore & Ohio R. R. Co., 294 U. S. 240, and Nortz v. United States, 294 U. S. 317; and the rentals measured in terms of dollars, viz.: $1500 of gold coin of the United States of the weight and fineness of the coinage of 1894 became, under the Joint Resolution, dischargeable dollar for dollar in any currency which was legal tender when they became due.

As Mr. Justice Stone said in his concurring opinion in Perry v. United States, 294 U. S. at p. 360: "It is the prohibition, by the Joint Resolution of Congress, of payment of the increased number of depreciated dollars required to make up the full equivalent, which alone bars recovery."

We do not think the case is to be decided on the basis of damages for a breach of the contract to pay the rentals by a delivery of a quantity of gold. That has become impossible by an Act of Congress within its constitutional powers, see Nortz v. United States, supra, p. 328, and the appellee is not responsible for any default in this respect. These proceedings are for the purpose of ascertaining the amount due as an equivalent in currency, the payment of which would be in full discharge of the obligation.

Nor do we think the amount due is measured by the market price of gold in London, or what could be obtained for certain kinds of gold at the United States Mint, or what the Secretary of the Treasury might determine he would pay for gold illegally held and delivered after January 17, 1934. Payment in gold is excluded from consideration. The appellee could not obtain the gold, nor could it use it for monetary purposes. It cannot be fairly said that on July 1, 1934, there was any market price for gold in this [fol. 130] country except the several kinds enumerated in the proclamation of the Secretary, none of which can be used for monetary purposes to discharge an obligation of this kind. The sum of $20.67 per ounce, which the Secretary continued to pay, if he did, after January 17, 1934, was not a continuing offer, but one which he might withdraw or reduce at any time.

It is suggested that the Joint Resolution, if applied to this case, is unconstitutional. The Supreme Court held that the basis for its constitutionality is the power vested in Congress to regulate the coinage and value of money. Since the gold clause in corporate bonds are of so common occurrence and involve such large amounts as to seriously interfere with the regulation of the currency of the United States, these contracts in corporate bonds to pay in gold must yield to this constitutional power of Congress.

But it is urged that provisions of the kind found in these indentures are so uncommon that they cannot be held to interfere with the constitutional power vested in Congress to regulate the currency and, therefore, the Joint Resolution, if applied here, deprives the appellant of its property

without due process, and is beyond the power of Congress.

While such contracts may interfere with the constitutional power to regulate currency in a much lesser degree than the gold clause in corporate bonds or in gold certificates, the degree is not controlling. The extent of the interference is not for this court to determine. If Congress has determined that there is in fact interference with its constitutional powers, any contract causing such interference must yield to congressional authority.

The court said in Norman v. Baltimore & Ohio R. R. Co., supra, page 311:

"That point is whether the gold clauses do constitute an actual interference with the monetary policy of the Congress in the light of its broad power to determine that policy. Whether may may be deemed to be such an interference depends upon an appraisement of economic conditions and upon determinations of questions of fact. With respect to those conditions and determinations, the Congress is entitled to its own judgment. We may inquire whether its [fol. 131] action is arbitrary or capricious, that is, whether it has reasonable relation to a legitimate end. If it is an appropriate means to such an end, the decisions of the Congress as to the degree of the necessity for the adoption of that means, is final."

The Joint Resolution recites the determination of Congress as follows:

"Whereas the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount of money of the United States measured thereby, obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts."

Congress has made no exception of unusual contracts, such as these indentures, which alone may have only slight effect on the constitutional power to regulate the currency of the country. This court can make none because of the lesser degree by which these indentures restrict that power,

especially under the emergency found by Congress in 1933. Congress having declared in the Joint Resolution that all obligations heretofore or hereafter incurred that are measured in terms of gold are prohibited, and are payable dollar for dollar in any currency which is legal tender at the time of payment, we think these indentures come within the intent of the Resolution. If hardships follow, they must be borne. With the wisdom of such a policy the courts are not concerned.

It is true that if, under the typical indenture under consideration here, the petitioner was paid 80.625 ounces of gold, nine tenths fine, in gold dollars containing only 15 5/21 grains of gold, nine tenths fine, the equivalent in currency would be approximately $2539.69, while if the obligation were discharged dollar for dollar, it would receive only $1500 in the depreciated currency,—which, by the way, is the same amount it would receive for 80.625 ounces of gold [fol. 132] measured in gold dollars of 25.8 grains, nine tenths fine, or in currency based on the same standard.

Undoubtedly the draftsman of these indentures sought to stabilize the amount the petitioner would receive as rental, regardless of the fluctuation in the currency, but if by so doing the indentures in such an emergency as existed in 1933 added in some degree to the interference by gold clauses in other obligations with the constitutional power of Congress to regulate the currency, the petitioner must accept any action of Congress with that end in view.

The petitioner can pay its taxes, workmen, for materials and interest on its obligations and all other expenses in the same currency it receives, which is legal tender for all public or private debts. It does not have to pay out currency based on a standard unit of value containing 25.8 grains of gold and receive currency based on a unit of value containing 15 5/21 grains of gold. It receives and pays out currency based on the same standard, viz.: a gold dollar containing 15 5/21 grains of gold, nine tenths fine. Except in so far as the prices of labor and materials may have been increased by the devaluation of the dollar, it suffers no hardship. The prices of labor and materials are always subject to fluctuation without any change in the standard unit of value of the currency.

Nor is the appellant the only one affected by a change in the standard unit of our currency. Every person whose

income is derived from a stated salary, or wage, or is derived from interest on bonds, or dividends on stocks, may be affected in the same way, though not to the same extent.

In view of the intent of the government as expressed in the several executive orders and proclamations of the President and Secretary of the Treasury, the Joint Resolution and Acts of Congress above referred to, we think the rentals in these indentures may be discharged by the payment, dollar by dollar, of the amount which the quantity of gold named therein equals in gold coin of the weight and fineness of the years specified in each indenture, or in the indenture of March 1, 1895, by the payment of $1500 [fol. 133] in any currency which was legal tender for public or private debts on the due dates of the rentals.

Since we arrive at the same result as to the amount of the petitioner's claim as the District Court, the proper deductions being agreed upon, the mandate may be:

The decree of the District Court is affirmed as to the amount of the petitioner's claim with costs of this court to the appellee.

Morton, J., concurs on the ground that the case is within the scope of the decisions and opinions in the Gold Clause Cases, ubi supra.

[fol. 134] In United States Circuit Court of Appeals, First Circuit

Petition for Leave to Appeal to the Circuit Court of Appeals—Filed August 23, 1935

Your petitioner, Holyoke Water Power Company, being aggrieved by a final decree entered in the above-entitled proceeding on the twenty-seventh day of July, 1935, in the District Court for the District of Massachusetts, does hereby petition for leave to appeal to the United States Circuit Court of Appeals for the First Circuit.

Bentley W. Warren, Nathan P. Avery, James M. Healy, Donald C. Starr, Attorneys for Holyoke Water Power Company, Petitioner. Warren, Garfield, Whiteside & Lamson, Avery, Healy & Button, of Counsel.

IN UNITED STATES CIRCUIT COURT OF APPEALS

PETITIONER'S ASSIGNMENT OF ERRORS—Filed August 23, 1935

[MEMORANDUM.—The assignment of errors being the same as the assignment of errors filed in the District Court, printed at page 77, is here omitted. A. I. Charron, Clerk.]

RECITAL AS TO HEARING

On January 7 and 8, 1936, this cause came on to be heard, and was fully heard by the court, Honorable George H. Bingham, Honorable Scott Wilson and Honorable James M. Morton, Jr., Circuit Judges, sitting.

Thereafter, to wit, on the fifteenth day of April, A. D. 1936, the opinion of the court (page 91) was filed, and the following Final Decree was entered:

[fol. 135] IN UNITED STATES CIRCUIT COURT OF APPEALS

FINAL DECREE—April 15, 1936

This cause came on to be heard January 7 and 8, 1936, upon the transcript of record of the District Court of the United States for the District of Massachusetts, and was argued by counsel.

Upon consideration whereof, It is now, to wit, April 15, 1936, here ordered, adjudged and decreed as follows: The decree of the District Court is affirmed as to the amount of the petitioner's claim with costs of this court to the appellee.

By the Court.

Arthur I. Charron, Clerk.

RECITAL AS TO ISSUANCE OF MANDATE

Thereafter, to wit, on May 16, 1936, mandate issued to the District Court.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 136] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 12, 1936

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below, which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: Enter Bentley Wirt Warren. File No. 40,720. U. S. Circuit Court of Appeals, First Circuit. Term No. 180. Holyoke Water Power Company, petitioner, vs. American Writing Paper Company, Inc. Petition for a writ of certiorari and exhibit thereto. Filed July 11, 1936. Term No. 180, O. T., 1936.